IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	No. 17-md-2804
APPLIES TO ALL CASES	)	Hon. Dan A. Polster

VIDEO DEPOSITION OF SANDRA KINSEY

June 7, 2019
9:05 a.m.

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER CONFIDENTIAL REVIEW

Reporter: John Arndt, CSR, CCR, RDR, CRR
CSR No. 084-004605
CCR No. 1186

DEPOSITION OF SANDRA KINSEY produced, sworn, and examined on June 7, 2019, at Marcus & Shapira LLP, One Oxford Centre, 35th Floor, in the City of Pittsburgh, State of Pennsylvania, before John Arndt, a Certified Shorthand Reporter and Certified Court Reporter.

APPEARANCES OF COUNSEL

On Behalf of Plaintiffs:
Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.
316 South Baylen Street, Suite 600
Pensacola, FL 32502
(850) 435-7043
BY: MR. BRANDON L. BOGLE
bbogle@levinlaw.com

On Behalf of HBC Services and the witness:
Marcus & Shapira LLP
301 Grant Street
Pittsburgh, PA 15219
(412) 471-3490
BY: MR. ROBERT M. BARNES
rbarnes@marcus-shapira.com
MR. JOSHUA A. KOBRIN
kobrin@marcus-shapira.com

On Behalf of Walmart:
Jones Day
77 West Wacker Drive
Chicago, IL 60601
(312) 269-4335
BY: MS. TARA A. FUMERTON
tfumerton@jonesday.com

On Behalf of Johnson & Johnson and Janssen:
O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
(415) 984-8700
BY: MR. DANIEL H. LEIGH
dleigh@omm.com
(present via videoconference)

APPEARANCES OF COUNSEL (CONTINUED)

On Behalf of Purdue Pharma:
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3599
BY: MS. SHARON TURRET
sharon.turret@dechert.com
(present via videoconference)

On Behalf of AmerisourceBergen:
Reed Smith LLP
1301 K Street, Suite 1000
Washington, DC 20005
(202) 414-9286
BY: MS. LINDSAY A. DeFRANCESCO
ldefrancesco@reedsmith.com
(present via videoconference)

On Behalf of Allergan Finance, LLC:
Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
(312) 862-2000
BY: MR. ZACHARY A. CIULLO
zac.ciullo@kirkland.com
(present via videoconference)

On Behalf of Discount Drug Mart:
Cavitch, Familo & Durkin Co. LPA
1300 East 9th Street
Cleveland, OH 44114
(216) 621-7860
BY: MR. ERIC J. WEISS
(present via videoconference)

On Behalf of Walgreens:
Bartlit Beck LLP
54 West Hubbard Street
Chicago, IL 60654
(312) 494-4410
BY: MR. BRIAN C. SWANSON
brian.swanson@bartlitbeck.com
(present via videoconference)

APPEARANCES OF COUNSEL (CONTINUED)

Bailey & Wyant, PLLC
500 Virginia Street East, Suite 600
Charleston, WV 25301
(304) 345-4222
BY: MR. MICHAEL W. TAYLOR
mtaylor@baileywyant.com
(present via videoconference)

Also present: Jacob Arndt, videographer
Ian Eberle

INDEX OF INTERROGATION

INDEX OF EXHIBITS

(Exhibits are attached.)

THE VIDEOGRAPHER: We are now on the record. My name is Jacob Arndt. I'm a videographer representing Golkow Litigation Services. Today's date is June 7th, 2019, and the time is 9:05 AM.

This video deposition is being held in Pittsburgh, Pennsylvania, in re National Prescription Opiate Litigation for the United States District Court for the Northern District of Ohio, Eastern Division. The deponent is Sandra Kinsey.

Counsel, please identify yourselves.

MR. BOGLE: Brandon Bogle on behalf of the plaintiffs.

MR. BARNES: Robert Barnes, Marcus & Shapira, for HBC Service Company and the witness, Sandra Kinsey.

MR. KOBRIN: Joshua Kobrin of Marcus & Shapira. I'm also representing HBC Service Company and the witness.

MS. FUMERTON: Tara Fumerton from Jones Day representing Walmart.

MR. BARNES: Ian, you want to --

MR. EBERLE: Ian Eberle at Marcus & Shapira.

MR. BARNES: Ian is a first-year law

student.

MR. BOGLE: Hey, Ian. Nice to meet you, man.

MR. BARNES: He wants to see how these things happen, and if he sticks in law school after this deposition, that will be a plus.

THE VIDEOGRAPHER: Anybody on the phone?

MR. BOGLE: You want the phone stuff?

THE REPORTER: Would you like to announce your appearances on the record on the phone?

MR. LEIGH: Daniel Leigh from O'Melveny & Myers on behalf of Janssen defendants.

MS. TURRET: Sharon Turret from Dechert on behalf of Purdue.

MS. DeFRANCESCO: Lindsay DeFrancesco from Reed Smith on behalf of AmerisourceBergen Drug Corporation.

MR. CIULLO: Zac Ciullo from Kirkland & Ellis on behalf of Allergan Finance LLC.

MR. WEISS: Eric Weiss from Cavitch, Familo & Durkin on behalf of defendant Discount Drug Mart.

THE VIDEOGRAPHER: The court reporter is John Arndt and will now swear in the witness.

The witness, SANDRA KINSEY, first having been duly sworn, testified as follows:

EXAMINATION

BY MR. BOGLE:

Q. Good morning.

A. Good morning.

Q. My name is Brandon Bogle. I'm going to be asking you some questions today regarding your report that you submitted in the opioid litigation. Can I get your full name first, please?

A. Sandra Kinsey.

Q. And I understand you've had your deposition taken before, but I just want to go through an abbreviated sort of set of rules here, hopefully make things go a little smoother today.

So I'm going to ask you questions. I'd ask that before you start your answer you wait till I finish my question, even if you think you might know where I'm going with the question. That will make the transcript a little clearer and help ensure that you're answering the right question. Is that fair?

A. Sure.

Q. And I'll try to do the same for you. I

will try not to ask any questions until you're done with your answer. I'm sure I'll mess that up a few times, but that's certainly my ambition.

The only other thing that I wanted to mention, if you don't hear or understand a question that I ask, feel free to ask me to repeat or rephrase. Otherwise I'm going to assume that -- if you answer the question that you understood it. Is that fair?

A. Yes.

Q. Where are you currently employed?

A. I work for Kinsey Partners.

Q. And do you own that business?

A. I do that business.

Q. And you opened that business in 2014; is that right?

A. I did, and if I may, I also work for Highlands Oncology. I do have an employment with them.

Q. What do you do with Highlands Oncology?

A. I'm a clinical pharmacist.

Q. Do you see patients?

A. I do.

Q. How many days a week do you work with Highlands Oncology?

A. It's roughly one day a week. I strictly

do relief work.

Q. When you say relief work, what does that mean?

A. I help fill in when people have a day off, when they need assistance by another pharmacist to fill in a shift. So I roughly on average -- I've been working a little bit more lately because they've lost a pharmacist, but roughly it's about one day a week.

Q. And when you work one day a week, are they usually full sort of eight-to-10-hour days, or are they half days, or what are they --

A. They're full eight-to-10-hour days.

Q. When did you start working for Highlands Oncology?

A. March.

Q. Of this year?

A. Yes.

Q. What made you decide to start working for them?

A. Well, I've been working as a relief pharmacist for several years since I left Walmart, and Highlands needed a relief pharmacist. My other relief work, I bill through my company as a 1099, as a contractor, and Highlands preferred to hire me as an

employee instead.

Q. Where is Highlands located?

A. Rogers, Arkansas.

Q. And sort of as the name implies, I understand they would treat predominantly cancer patients?

A. Predominantly, yes.

Q. Where have you done relief work for other than Highlands Oncology?

A. I've worked for Talley Pharmacy in Centerton, Arkansas, Teasley Drug in Gravette, Arkansas, Smith Drug in Gentry, Arkansas, Jepson Drug in Siloam Springs. I do relief work. I know these independent pharmacists, and so when they need a day off, I'm happy to go help.

Q. And for these four other pharmacies you've listed, have you seen patients in that context as well?

A. Yes.

Q. Are there any sort of specialties for any of those four pharmacies as far as patients they serve?

A. Not really. Talley Pharmacy did have a compounding business, so I saw a lot of females for hormones, but they have since -- the owner has since sold that pharmacy to a small chain.

Q. Any of the other of the three you've listed have any sort of specialty as far as patients they see?

A. No, they're just general retail.

Q. Okay. I'm going to hand you what I'm marking here as Kinsey Exhibit 1, which is the expert report that you served initially in this case.

[Exhibit Kinsey-001 marked for identification.]

Q. And as Exhibit 2, I'm going to mark your amended expert report. Here you go.

[Exhibit Kinsey-002 marked for identification.]

A. Thank you.

Q. And the amended expert report that I handed you here was served this Monday. Does that sound accurate to you?

A. Yes.

Q. And what prompted you to do an amended report?

A. Further review. After I submitted the report, I went back through and -- like you do with normal edits and continued to find things that I felt needed further clarification for the record. I found

some typos, that kind of stuff.

Q. I'm going to hand you now what I'm marking as Exhibit 3 to your deposition.

[Exhibit Kinsey-003 marked for identification.]

Q. And Exhibit 3 is entitled errata to May 10, 2019, expert report of Sandy K.B. Kinsey, R.Ph, MBA. Do you see that?

A. Yes. Sorry.

Q. And what is the purpose of this errata?

A. It was to document the changes between the initial report and the amended report.

Q. So all of the changes on the amended report -- would those be captured on this errata?

A. I believe they're all on here, yes.

Q. Is there anything as you sit here today that you're aware of that -- as far as changes go from the initial report to the amended report that are not captured on this errata?

A. No, I believe they're all in here.

Q. So between the initial expert report and the amended report, which are Exhibits 1 and 2, do those reports include all the opinions you intend to offer in this case?

A. They include the opinions that I have concluded to date and that I felt were most applicable to this particular case.

Q. So are there any additional opinions you intend to offer that are not captured in those reports?

A. I mean, I'm not going to limit my opinions, but the ones that I feel are most important are included in my report.

Q. Well, I'm entitled to know what opinions you're going to offer. That's one of the purposes of the deposition today. So I'm trying to get a sense of what that is and whether I can find those in the four corners of those reports.

A. So for that purpose, then yes, these are the opinions that I intend to offer up to today.

Q. Are you currently working on anything related to this case that you intend to supplement your reports with?

A. I don't believe so. Not at this time.

MR. BARNES: And for the record, we do reserve -- as plaintiffs have done, we reserve the right to supplement her report for information learned after the dates of her report.

BY MR. BOGLE:

Q. I want to go on Exhibit 3 to the third page. So for Exhibits H and I on this page, you deleted references to those documents which had a stamp that said Analysis Group, Inc.; correct?

A. Yes.

Q. Why did you remove those references?

A. Just formatting.

Q. Were those exhibits created by Analysis Group, Inc.?

A. They were. Under my direction.

Q. Who did you work with at Analysis Group to create those exhibits?

A. There were three people, and I apologize; I only know their first names. David, David, and Vandella (ph).

Q. Had you worked with these individuals before working on this case?

A. I have not.

Q. How did you come to work with them here?

A. They are a consulting group that was hired by Marcus & Shapira to help crunch some of the data involved in this case so that I could better draw my opinions.

Q. Did you specifically ask for another group

to be brought in to assist you in crunching these numbers, as you say?

A. I did ask for some help, but Marcus & Shapira were the ones that actually brought them in as consultants.

Q. Could you have done the data analysis in this case without assistance from a third party?

A. No, probably not. Given the time, maybe, but I would have preferred to rely on a consulting group.

Q. Are you relying on the Analysis Group or any work that they've done for any opinions you're reaching here today?

A. When you say rely -- I mean, all of the opinions are mine. The information that they provided just substantiate my opinions.

Q. Are there any opinions you could not have reached on your own without the assistance of Analysis Group, Inc.?

A. No.

Q. So the references to Analysis Group, Inc., were removed on Exhibits H and I. Did they assist you in creating any other exhibits in your report?

A. Yes.

Q. Which ones?

A. The majority of the charts associated with anything that had to do with the data crunching and looking at Dr. McCann's data and Giant Eagle data they helped with.

Q. Can you give me a list of the exhibits that they assisted you on?

A. Sure. It would be Exhibit D, E, F, G, H, I, J, M, N, O, P, and Q.

Q. Do you have a background in statistics?

A. No.

Q. Do you hold yourself out as an expert in statistics?

A. I'm not an expert in statistics, but I've evaluated plenty of datasets.

Q. Have you ever testified as an expert on a matter related to statistical analyses?

A. No.

Q. What specifically did you ask the individuals at AGI to do to assist you here? What were your directions to them?

A. You know, it was really around as I was drawing my opinions and thinking about the data. I mean, it was -- it's brought up in my report as I was

drawing my conclusions I wanted to look at the data to ensure that it substantiated the conclusions that I was coming to, and I wanted help with graphs and charts and illustrations.

Q. Did you reach the conclusions outlined in your report before AGI was brought in to assist in running data?

A. Some of them, yes.

Q. Which ones had you not -- which opinions had you not concluded in your mind prior to AGI being consulted?

A. Well, I mean, that's a broad question. I can give -- I certainly can give you an example. So one of the conclusions that I talk about in McCann's data is some of the duplicate transactions that he had in his dataset. I didn't see those based off of a broad scan of his report. That information was discovered as AGI began digging into his dataset.

Q. Anything else that comes to mind as far as things that you had not reached a conclusion on or you had not noticed in reviewing the reports that AGI brought to your attention?

A. There are such things as we go through the exhibits with dates and times in which he is flagging

orders in which HBC was not distributing, so some of the errors in his data AGI discovered and pointed out to me.

Q. The he -- you're referring to Dr. McCann?

A. I'm sorry. Yes.

Q. So if, for example, AGI created Exhibits H and I, why remove the reference to them in the actual documents?

A. Personal preference.

Q. Why was that your preference?

A. Because I wanted them to look like all the other reports.

Q. When you say all the other reports, what are you referring to?

A. The other exhibits.

Q. The other exhibits in your report?

A. The other exhibits in my report didn't have their stamp on it, so I was just from a formatting perspective wanting it to look nice.

MR. KOBRIN: This is Joshua Kobrin. Counsel also wanted to put the same confidential subject to protective order stamp on it. I think it might have been slightly different in the initial report. I think it only said confidential.

BY MR. BOGLE:

Q. Are there any corrections to your current amended report that was served on Monday that you'd like to make at this time?

A. No.

Q. All right. I'm going to hand you Exhibit 4, which is your deposition notice.

[Exhibit Kinsey-004 marked for identification.]

MR. BARNES: Thanks.

BY MR. BOGLE:

Q. Have you seen this notice prior to today?

A. I don't think so.

Q. If we can go to the third page of the document, Exhibit A. You see there there are three things that we've requested be produced prior to or at the deposition. I want to kind of go through these with you.

Number 1 says all documents or other materials you reviewed since the date of your report that you have not specifically identified in your report in preparation for your expected testimony. You see that?

A. Yes.

Q. And yesterday I did receive what I'm going to mark as Exhibit 5 to your deposition. There you go.

[Exhibit Kinsey-005 marked for identification.]

Q. If you see, Exhibit 5 is titled additional documents reviewed by Sandra Kinsey. Do you see that?

A. Yes.

Q. Was Exhibit 5 created in response to the Document Request Number 1 in Exhibit A of the deposition notice that I just reviewed with you?

A. Yes.

Q. And the documents listed in Exhibit 5 -- when did you review these?

A. This week.

Q. What days this week?

A. Tuesday and Wednesday.

Q. For what purpose did you review these documents?

A. Further education and preparation for this deposition.

Q. Did you ask for these specific materials, or were they provided to you by counsel at their request?

A. They were provided by counsel.

Q. Do you intend to offer any new opinions based on the documents listed in Exhibit 5?

A. No.

Q. How do these documents impact your existing opinions?

A. They don't. Other than to reinforce my current opinions.

Q. Which current opinions do they reinforce?

A. Most of them.

Q. Any specific opinions you could tell me?

A. No.

Q. Had you asked AGI to run any additional calculations based on the second supplemental expert report of Craig McCann?

A. I think we did one, yes.

Q. You did one based on the second supplemental report?

A. I'm confused. Ask your question again.

Q. Yeah. So Exhibit 5 --

A. Okay.

Q. -- one of the documents you list --

A. Uh-huh.

Q. -- is the second supplemental expert report of Craig McCann.

A. Oh.

Q. And my question was did you ask AGI to run any additional calculations based on anything contained in that report?

A. No, I did not. I'm sorry. I misunderstood you.

Q. That's all right. All right. Let's go back to the deposition notice, Exhibit 4. The second request there is for an itemization of hours spent and compensation paid or to be paid for your work in this matter and your staff's work in this matter, including all invoices you have submitted to counsel.

Do you see that?

A. Yes.

Q. And I'm going to hand you what I'm marking as Exhibit 6 to your deposition, which are a copy of the invoices that I received yesterday.

[Exhibit Kinsey-006 marked for identification.]

Q. Are the invoices I provided to you as Exhibit 6 intended to be responsive to our Request Number 2 here on the deposition notice?

A. Yes.

Q. Request Number 3 in Exhibit A asks for a

copy of your most current and accurate CV as of the date of your deposition. Do you see that?

A. Yes.

Q. I know you provided a CV in your initial report and in your amended report. Is that CV current and up-to-date and accurate?

A. Yes.

Q. What did you do to prepare for your deposition today?

MR. BARNES: Objection to the extent it seeks to invade privileged communications. So you can answer generally without getting into discussions with counsel.

A. Preparing for the deposition was rereading my expert report, getting comfortable speaking with counsel, the general things you do to get ready for a deposition.

BY MR. BOGLE:

Q. How much time did you spend preparing for your deposition?

A. A couple of days.

Q. How many hours?

A. Roughly 20.

Q. Over which days?

A. So let me change that. I did a little bit of work last week, so roughly 30 hours, maybe, a day or so last week, and then two days this week.

Q. Did you meet with any attorneys for this preparation?

A. I did.

Q. Which ones?

A. Bob Barnes and Josh Kobrin.

Q. Did you meet with any counsel --

A. And Scott Livings -- that was Scott Livingston; right? Yeah, Scott Livingston, I believe. Sorry. You can ask him.

MR. BARNES: He's a partner of mine.

BY MR. BOGLE:

Q. Okay. Anybody else that you met with for these preparation sessions?

A. Not attorneys, no.

Q. Any non-attorneys that you met with during these preparation sessions?

A. I had conference calls with the folks at AGI.

Q. The same three folks you gave me earlier?

A. Yes.

Q. What did you discuss with the AGI folks?

MR. BARNES: Excuse me. I'm going to object and instruct the witness not to answer to the extent it has anything to do with the preparation of any draft report.

A. We --

MR. BOGLE: But AGI is not an expert in this case. They're not -- they haven't offered any expert reports. It's like any other third party.

MR. BARNES: I'm talking about her expert report.

MR. BOGLE: She's speaking to a third party, not her counsel. I don't think this is protected.

MR. BARNES: She's speaking to a consulting expert who are data analysis experts. To the extent she had any discussions about the preparation of any draft report, it's not permissible.

BY MR. BOGLE:

Q. So the discussions for deposition preparation were after your report was submitted; correct?

A. Yes.

Q. So what did you discuss?

A. Well, we did some --

MR. BARNES: Hold on.

MR. KOBRIN: Some of it is before the amended report was submitted, just to clarify.

MR. BARNES: Be clear -- first give him the dates of the conversations and then secondly, to the extent it related to the preparation of any draft report, including any amended report, do not divulge that information.

A. Fair enough. So we discussed the conversations that I had that were related to preparing for the deposition. They helped me with just mock questions for the deposition and helping me to prepare.

BY MR. BOGLE:

Q. Did they provide those mock questions to you orally or in writing?

A. It was just -- they were just asking questions via conference call.

Q. What sort of questions did they ask you?

A. They were just prepping me, helping to prep me for the deposition.

Q. Do you recall anything they asked you?

A. They were asking questions about the report. We were role-playing.

Q. What specifically did they ask you?

A. Again, just questions about the depo -- about the report and certain things that potentially you would ask.

Q. Did they question you on any of the exhibits that they helped you create?

A. They did.

Q. Which ones?

A. We dis -- well, they had questions about several of them. At this point I can't recall specifically.

Q. Which individual was asking you questions? Or was it all three?

A. I believe it was just one. It's hard to tell. It was via conference call.

Q. Do you know which person was asking you questions?

A. It was one of the males, so it was either David or David.

Q. Was anybody else on these calls with you other than you and the folks at AGI?

A. Counsel, Josh, was on the phone.

MR. BARNES: And for that reason, I'm instructing you not to answer any further questions with respect to these phone calls.

BY MR. BOGLE:

Q. Was counsel asking you questions as well -- mock questions? I'm not asking you what the questions are. I'm just asking if he asked you questions -- mock questions.

MR. BARNES: I really think this is invading privilege, so I'm going to instruct the witness not to answer.

BY MR. BOGLE:

Q. Have you met with any counsel other than those representing HBC related to your work in this case?

A. No.

Q. Did you create any outlines or notes to assist you in the deposition today?

A. No.

Q. Did you bring anything with you to the deposition today?

A. No.

Q. And we don't need to hash all this out now, but we're going to likely be requesting a deposition for the individuals at AGI related to their work with Ms. Kinsey. So we could talk about that later, but -- and I also think that we're entitled to

ask a lot of these questions that you're instructing her not to answer related to their work.

MR. KOBRIN: On what basis --

MR. BOGLE: So we'll reserve on that -- I don't think it's privileged.

MR. KOBRIN: On what basis would you be seeking a deposition?

MR. BOGLE: For their work in creating this report.

MR. BARNES: You believe you have a right to depose consulting experts who assisted testifying experts? Is that what you're saying?

MR. BOGLE: Yeah, that actually created exhibits that she's relying on for her opinions? Absolutely.

MR. BARNES: We disagree.

MR. BOGLE: Okay.

BY MR. BOGLE:

Q. Prior to your work in --

MR. BARNES: You're going to have a lot of depositions if you go down that road.

BY MR. BOGLE:

Q. Prior to your work in this case, have you ever done any consulting or litigation work for HBC?

A. No.

Q. Had you ever heard of HBC prior to your work in this case?

A. No.

Q. Prior to your work in this case, had you ever done any consulting or litigation work related to any opioid product?

A. No. Oh. Yes.

Q. What did you do?

A. I provided some subject matter expertise to Amneal Pharmaceuticals on Suboxone.

Q. What was the nature of the expertise you provided them?

A. Retail pharmacy practice.

Q. What specifically did you tell them?

A. I mean, that's a long conversation with them, and it's also under protective order, but in general it was about the drug and how pharmacy practice works with respect to drug substitution between brands and generics.

Q. Did you advise them in any way regarding suspicious order monitoring?

A. No.

Q. Did you advise them in any way related to

anti-diversion efforts?

A. No.

Q. Is this related to an ongoing litigation?

A. No.

Q. Was it in a consulting capacity?

A. Yes.

Q. Have you ever published anything related to opioids?

A. No.

Q. Have you ever conducted a risk-benefit analysis for a patient contemplating taking opioids?

MR. BARNES: Objection to the form. Vague.

A. I mean, when you -- so what do you mean by risk-benefit analysis?

BY MR. BOGLE:

Q. Meaning did you ever discuss with a patient the risks and benefits of opioids for a patient who was contemplating taking --

A. Yes.

Q. How many times?

A. Several.

Q. How recently?

A. Tuesday.

Q. And what did you tell the patient?

A. A lot of what is in the patient information sheets that are included in my exhibit -- or included in my report.

Q. How long was your conversation with that patient?

A. Roughly five minutes.

Q. And did you ultimately offer an opinion as to whether that patient should or should not take the opioid product?

MR. BARNES: I'm going to object. We're here for her expert opinion in this case, not with respect to what she may have advised the patient.

MR. BOGLE: I'm entitled to know about her knowledge related to opioids. This is clearly relevant.

MR. BARNES: And now you're asking her about an opinion given to a patient?

MR. BOGLE: Yeah.

MR. BARNES: That's totally unrelated to the case?

MR. BOGLE: It's not totally unrelated. It goes to her knowledge of opioids.

MR. BARNES: It's totally unrelated.

BY MR. BOGLE:

Q. It's about opioids. You can answer.

A. Will you ask the question again, please?

Q. Sure. Did you ultimately offer an opinion as to whether or not that patient should or should not take the opioid product?

MR. BARNES: Same objection.

MS. FUMERTON: This is Tara Fumerton. I'm just going to add in an objection that I disagree that you can ask any question that relates to an opioid, so again, to the scope of the question, I join in counsel's objection.

BY MR. BOGLE:

Q. Okay. You can answer.

A. Will you ask the question again, please?

Q. Sure. Did you offer an opinion to that patient as to whether or not they should take the opioid product?

A. No.

Q. Did they ask for your opinion in that regard?

A. No.

Q. Do you recall telling them anything about opioids other than what's contained in the medical

information sheet?

A. No.

Q. Have you ever offered a recommendation to a patient to take or not take an opioid product?

A. Yes.

Q. In what capacity?

A. As a pharmacist.

Q. And what was your recommendation?

A. I mean, I make multiple recommendations to support a physician's diagnosis and treatment plan.

Q. So did you recommend they take the product or not?

A. I recommend they follow the prescriber's treatment plan.

Q. Have you ever personally made the decision to refuse to fill an opioid prescription?

A. Yes.

Q. How many times?

A. Several.

Q. Under what circumstances?

A. What do you mean by under what circumstances?

Q. Why did you refuse?

A. I was uncomfortable with the prescription.

The physician asked me to tear the prescription up. There's a num -- that's a couple of reasons why I would not fill a prescription.

Q. When you say you were uncomfortable with a prescription, what made you uncomfortable?

A. Sometimes when you can't get a hold of the physician and you're looking at the prescription itself and you disagree with the quantity or the directions or the frequency in which a patient is being prescribed or receiving the medication, I would make the judgment decision not to fill it.

Q. And can you tell me -- you said several times that you made a recommendation or that you decided not to fill an opioid prescription. Can you give me more detail on how many times that's occurred?

A. No.

Q. You don't have any more detail other than several?

A. It happens quite frequently. Patients don't realize the last time they picked up their prescription and so they come back in to pick up their next prescription, and you just tell them I can't fill it today but I can fill it in three days or I can fill it in four days. Working for an oncology clinic, I

have that conversation frequently.

Q. Specific to opioids?

A. Specific to opioids. But it also happens with other drugs. It's not limited to opioids.

Q. Have you ever designed a suspicious order monitoring program for controlled substances?

A. What do you mean by suspicious order monitoring program?

Q. Are you unclear on what that term means as it relates to controlled substances?

A. No, I'm trying to understand what elements of that that you're getting at.

Q. I'm just asking generally whether you've designed a suspicious order monitoring program for controlled substances.

MR. BARNES: And she's asked you to explain what you mean by that term.

BY MR. BOGLE:

Q. What do you mean by that term?

A. I'm not asking the question.

Q. I get to ask the questions.

A. I understand --

Q. So --

A. -- but I'm seeking clarity.

Q. How do you define a suspicious order monitoring program as it relates to controlled substances?

A. I mean, it's a multifaceted system that is defined by the Controlled Substances Act.

Q. What are the facets of that system -- of those systems?

A. I mean, reading the Controlled Substances Act, it is -- it has a number of security requirements, storage requirements, all aimed to protect against theft and diversion, of which a suspicious order monitoring system is a small part.

Q. Have you ever designed any component of a suspicious order monitoring system for controlled substances?

MR. BARNES: You mean as she has defined it?

MR. BOGLE: Sure.

A. I have assisted in developing operational policies and procedures to protect against theft and diversion, yes.

BY MR. BOGLE:

Q. What types of operational procedures?

A. Everything from inventory management,

counting and back-counting procedures, location and safety parameters for opioids -- those kinds of things.

Q. When you say safety parameters for opioids, what do you mean?

A. Where to store them in the pharmacy, what types of cabinets, vaults, safes that are used.

Q. Have you ever designed a system to flag suspicious orders of controlled substances?

A. Flag electronically?

Q. Sure.

A. No.

Q. How about manually?

A. That's a hard question to answer, because as a pharmacist, part of our pharmacy practice is to scrutinize every controlled substance prescription, particularly around opioids, so teaching and training is part of my job and part of my experience, and teaching pharmacists how to identify questions within a prescription was part of my job and continues to be part of my practice.

Q. Have you ever drafted written procedures for how to detect suspicious controlled substances orders?

A. I don't recall.

Q. Have you ever designed a suspicious order monitoring program for a pharmaceutical distributor?

A. No.

Q. Have you ever designed a suspicious order monitoring program for a pharmaceutical manufacturer?

A. No.

MR. BARNES: Just for clarity, I'm not sure you both are on the same page in terms of suspicious order monitoring. You gave a definition and he won't give you his definition, so I'd want to make sure that you're not adopting some definition that has been unexplained to you.

A. So I will amend the -- or I will change my answer about the distributor. I have been involved, again, with a suspicious order monitoring program as it's defined very broadly, including the security requirements and all of the things that an organization will do regarding theft and diversion prevention.

BY MR. BOGLE:

Q. For what distributor?

A. I've worked on things for Walmart, for -- for Walmart.

Q. What components of Walmart's suspicious order monitoring program for controlled substances did

you design?

MS. FUMERTON: I object to the form of the question and the specifics of going to a fact deposition effectively of her time at Walmart.

BY MR. BOGLE:

Q. You can answer.

MS. FUMERTON: I think in broad strokes she can talk about her experience, but beyond that, it's inappropriate.

MR. BOGLE: Okay. So you guys aren't allowed to make speaking objections. So I hear you, but you're not allowed to make speaking objections.

BY MR. BOGLE:

Q. So you can answer the question.

A. Part of my job at Walmart was to work on operations. I was a pharmacist there. Part of the operations, part of the distribution, everything from being a pharmacist to an executive. I worked on a number of different facets at Walmart over my 17-year career that worked on different programs, policies, and procedures to prevent theft and diversion.

Q. What components of Walmart's suspicious order monitoring program for controlled substances did you design?

MS. FUMERTON: Objection to form.

MR. BARNES: Now, hold on. Yeah. I'm going to instruct the witness you can testify generally about your experience and background, but you're not going to convert this into a fact deposition of Walmart.

MR. BOGLE: I'm entitled to know about her expertise in this area.

MR. BARNES: And that's all you're entitled to, and I'm instructing her do not get into details about Walmart's policies, Walmart's decision-making, anything like that. What your experience and duties were generally is fine.

BY MR. BOGLE:

Q. What components of Walmart's suspicious order monitoring program did you design?

MR. BARNES: Same instruction.

MS. FUMERTON: Object to form. Outside the scope.

A. Again, in general, I was responsible as part of the operational leadership team for general policies and procedures regarding prevention of theft and diversion.

BY MR. BOGLE:

Q. Did you design any of those policies or procedures? Did you write any of them?

A. I don't recall.

Q. Were you responsible at Walmart for creating a manual or automated system to flag suspicious orders of controlled substances?

A. An elec -- are you asking me about an electronic system?

Q. I believe my question was manual or automated.

A. As part of standard operating procedures, every pharmacist is involved in prevention of theft and diversion, so manual procedures in my opinion include every time a pharmacist scrutinizes a prescription, it's part of a suspicious order monitoring program.

Q. My question is whether you created any such system, not whether you operated under one.

A. To me the system includes all the policies and procedures that begin at store level and flow all the way through to the distribution, so so far as I have created manuals or operational procedures that begin at the pharmacy level, that's what I'm referring to.

Q. But have you created any manual or

automated system to flag suspicious orders of controlled substances while at Walmart?

MS. FUMERTON: Objection. Form. And I think needs clarification at the distribution or the pharmacy level.

MR. BOGLE: Either. I'm asking either right now.

MR. BARNES: And what do you mean by create?

MR. BOGLE: Design. And you don't get to ask questions either, so --

A. So --

MR. BARNES: I don't take instructions from you, by the way, and won't, so you can end that little practice.

A. So I will answer again. My opinion is that a suspicious order monitoring program to prevent theft and diversion is multifaceted and begins as a pharmacist scrutinizes the prescription all the way through the operational process until the order is then fulfilled by the distribution centers.

BY MR. BOGLE:

Q. Did you ever create an automated system to flag suspicious orders of controlled substances while

at Walmart?

A. No.

Q. And did you ever draft any written policies while at Walmart that were specifically aimed at detecting suspicious orders at the distribution level?

MS. FUMERTON: Objection. Form. Outside the scope.

A. Will you ask that question again, please?

BY MR. BOGLE:

Q. Did you ever draft any written policies while at Walmart that were specifically aimed at detecting suspicious orders of controlled substances at the distribution center level?

A. No.

Q. Have you ever designed a program that was designed to block suspicious orders of controlled substances?

A. No.

MR. BARNES: Same objection. Make sure you're on the same -- you're using the same terms.

BY MR. BOGLE:

Q. Outside the context of this litigation, has HBC ever retained you to evaluate its suspicious

order monitoring program for controlled substances?

A. No.

Q. Have you ever been retained as an expert or a consultant to evaluate a suspicious order monitoring program for controlled substances for a company?

A. No.

Q. From 1992 to present, has all of your financial compensation from an employment perspective come from companies that sell pharmaceutical products?

MS. FUMERTON: Objection. Form.

A. No.

BY MR. BOGLE:

Q. What aspect of your compensation during that time period has not come from those companies?

A. Well, I've worked for companies that aren't involved in pharmaceuticals.

Q. Which ones?

A. Well, I worked for RediClinic, which is in -- which is a medical clinic. And I have some consulting contracts that do not involve pharmaceuticals.

Q. And what companies are those for?

A. I don't have a complete list of all of my

clients as an executive consultant.

Q. From 1992 to present, what percentage of your income related to employment has come from companies selling pharmaceutical products?

MR. BARNES: I'm going to object to form. And where is this 1992 date coming from? Is that just a random date you selected?

MR. BOGLE: Why does it matter where it came from?

MR. BARNES: It matters because there's a thing called relevance, so --

BY MR. BOGLE:

Q. You can answer my question.

MR. BARNES: No. Don't answer the question beyond the last 10 years. I don't see where you get this relevance with 1992.

MR. BOGLE: You're instructing her not to answer beyond the last 10 years?

MR. BARNES: Yes. Yes. Yes.

MR. BOGLE: Based on what?

MR. BARNES: Based upon the same randomness that you picked 1992 out of the air.

MR. BOGLE: So you -- based on relevance you're telling her not to answer a question?

MR. BARNES: I'm telling you where -- I asked you where 1992 came from and you wouldn't tell me, so --

MR. BOGLE: I just want to make sure I understand the basis for your instruction. It's based on your view that it's not relevant?

MR. BARNES: Do you even remember 26 years ago?

MR. BOGLE: No, no, no, no, no, no, no. You don't get to ask her questions. No, no, no, no, no. That's now how this works.

MR. BARNES: Actually, I do.

MR. BOGLE: No, no, no.

MR. BARNES: When you're done I will ask her questions.

MR. BOGLE: That's fine. I'm not done.

BY MR. BOGLE:

Q. From 1992 to present, what percentage of your income has come from companies selling pharmaceutical products?

MR. BARNES: Object to form. Lack of relevance.

A. I can't recall.

BY MR. BOGLE:

Q. Any approximation whatsoever?

A. I would have to spend some time looking at it.

Q. Okay. Well, how about -- let's take your counsel's date, for example, then. Over the last 10 years, what percentage of your income has come from companies selling pharmaceutical products?

A. I don't know. I'd have to look at it. I don't keep those percentages in my head.

Q. What about the last five years?

A. Again, same answer. I don't know unless I look.

Q. How about the last two years?

A. I would have to look. Otherwise I'm speculating as a percent and I'm not going to speculate.

Q. Within the last 12 months?

A. I'm not going to speculate what percentage of my income.

Q. Over the last 12 months you don't know what percentage of your income has come from --

A. Off the top of my head, no. I haven't done the math.

Q. You have no idea what that number is?

A. I'm not going to speculate.
Q. That wasn't my question. You have no idea what that number is; is that true?
A. I'm not going to guess.
Q. That's not an answer to my question.
MR. BARNES: All right. I think this is enough. Let's move on.
BY MR. BOGLE:
Q. My question was do you have no idea what that number is over the last 12 months?
MR. BARNES: And she's asked and answered it three times.
MR. BOGLE: No, she hasn't.
MR. BARNES: Let's move on.
A. I'm not going to guess.
BY MR. BOGLE:
Q. So it would be a guess in your regard in the last 12 months?
A. Yes, if you're looking for a percentage number, I would have to guess.
Q. When were you first contacted to conduct work in this case?
A. I believe it was December, January time frame.

Q. December 2018, January 2019?
A. Yes, it was in January of 2019.
Q. Who contacted you?
A. Bob Barnes with Marcus & Shapira.
Q. Were you advertising for your expert services at that point in time?
A. Define advertising for me.
Q. Yeah. Were you using any sort of third-party service to put out in the public sphere that you were an expert witness?
A. I am listed on a website, but it's a we -- but it's a -- I don't know what you call it. It's -- I'm listed on a website, but it's something -- but just as -- and it has my r sum out there.
Q. What's the website?
A. Well, it's like LinkedIn but for pharmacy law.
Q. What's the name of the website?
A. I believe it's American Society of Pharmacy Law, and it's a membership-based service that I pay for.
Q. How much do you pay for that?
A. I don't know.
Q. Do you advertise your expert services in

any other fashion presently?

A. Not that I can recall.

Q. Have you ever advertised for your expert services in any fashion other than the website you've given me?

A. No, not that I recall.

Q. When did you start looking at documents in this case?

A. In January of 2019.

Q. If we go to Exhibit 6, which is your invoices. You have those?

A. Yes.

Q. The first date listed for document review is February 7th, 2019. Is that accurate, or should it be January?

A. That's accurate for my invoice, yes.

Q. Is that not accurate as to the actual work you did?

A. There were -- to prepare for my meeting with Bob in January when I came in for my initial discussions, he did give me some initial documents to review and to make sure that I had no conflicts.

Q. What documents did you get before you were retained?

A. I don't know exactly. He gave me the initial complaint, I believe, to review to familiarize myself with the companies and the people involved in the case to make sure that I was qualified to render an opinion and that I didn't have any conflicts.

Q. Anything else beyond that before you were retained?

A. I don't re -- I don't recall.

Q. What were you asked to do in this case?

A. I was asked to explain and talk about typical pharmacy practices regarding prescriptions, supply chain and distribution involving self-distributors and the relationship between the pharmacy, the corporate office, and the distributors themselves, and then to take a look at Giant Eagle's controls and render an opinion whether or not they were in compliance with the Controlled Substances Act.

Q. Have you ever been retained as an expert in a case and reviewed the materials and ultimately concluded that you couldn't offer the opinions you were being asked to offer?

A. No. But I don't get involved in a case if I can't stand by my opinions.

Q. Yeah, so what I asked you was have you

ever been retained as an expert in a case, ultimately reviewed the materials, and concluded that you couldn't offer the opinions you were being asked to offer?

A. No.

Q. Your work in the opioid litigation -- is it specific to the trial case involving Summit and Cuyahoga Counties, or is it broader than that?

A. Right now it's just Summit and Cuyahoga County.

Q. Have you been retained for any other opioid cases beyond those involving Summit and Cuyahoga?

A. No.

Q. Have you ever practiced as a pharmacist in either Summit or Cuyahoga County, Ohio?

A. No.

Q. Now, the hours that you've listed on the invoices marked as Exhibit 6 -- are those hours complete and accurate from the time you started working on the case through May 31st, 2019?

A. Yes.

Q. And how many hours have you worked from June 1st to the present on this case?

A. Roughly 40.

Q. And those 40 hours would be paid at the rate of $500 an hour; is that right?

A. Yes.

Q. So once you are paid for those hours, you will have been paid approximately $154,000 in this case? Does that sound right to you?

A. Yes.

Q. And per your invoices, Exhibit 6, it notes you started writing the expert report on April 29th. That's on the fourth page of the invoices. Do you see that?

A. I do.

Q. Is that accurate?

A. Well, I began drafting the outline earlier than that.

Q. But actually drafting the report itself began April 29th, 2019; is that true?

A. I mean, to me it all runs together between the outline and the report, but yes, the actual verbiage for the report began that last week in April.

Q. And there's an entry here on April 15th -- April 15th to 19th, 2019, again on that same page, the last entry there says review and respond to Pharmacy Times article, one hour. Do you see that?

A. Yes.

Q. What does that relate to?

A. Counsel sent me an article in Pharmacy Times that dealt with -- I believe it was shortages of opioids in the market.

Q. And when you say respond to, what sort of response did you provide to that article?

A. Oh, it was around DEA -- I'm trying to remember what that article was about, but it was just convers -- it was just a response back to counsel agreeing with the article and adding additional commentary.

Q. Did you provide any sort of published response to that article?

A. What do you -- no.

Q. Are you currently conducting any work on this case that's not referenced in your initial or amended reports?

A. No.

Q. Did you draft your expert reports yourself?

A. Yes.

Q. Are there any portions of your reports that you did not personally draft?

A. There were some paragraphs that were added or were offered by the Analysis Group, but all of it was reviewed, edited, and amended by me to reflect my opinions.

Q. What paragraphs came from Analysis Group? Can you point me to where those are in your report?

A. The paragraphs would be the ones around some of the exhibits.

Q. And take whatever time you need. Just let me know.

A. Okay.

MR. BARNES: Brandon, we've been going about an hour, and whenever you're at a good breaking point, I think we'll --

MR. BOGLE: As soon as she answers this question, I'm fine to stop for a break.

A. So the first one would be F.1.

Q. Can you give me a Page Number for your report?

A. Page 26. Actually, probably Page 27.

MR. BARNES: You're looking at Exhibit 2, the amended report?

A. I am. I'm sorry. Yes. So -- and when I say they offered information, it's because of the data

that they came out, they would give me a paragraph and I would take that paragraph and edit it and make sure that it flowed within the report and reflected my opinions. So they provided the substantiation for the opinions that I was drawing.

BY MR. BOGLE:

Q. Which paragraphs are you referring to on Page 27?

A. 72. 74. 76. 78. Paragraph 144, Page 50. Paragraph 145, Page 51. Paragraph 147. 148.

So for clarity, because I'm struggling with this -- so that I can answer your question correctly -- having discussions with them based on the information that I wanted to put in my report, they transcribed or they may have written some paragraphs, but it was all based on my language or my ideas, so I'm struggling answering what exactly it is that you want.

Q. That's what I'm asking you.

A. And I'm asking you for clarity.

Q. I'm asking you if they wrote any paragraphs or provided any paragraphs to you that are reflected in any way, shape, or form in your report.

A. Okay. And again, all of this is -- they're all my ideas and I edited and reviewed

everything, so it's hard for me -- it's not their idea, it's my idea, and they may have typed it as we were talking on the phone, so that's why it's hard for me to answer this question, because they're my ideas and they just happened to transcribe them and then forward them to me.

So if I didn't say it, it would be 149, 150, 151, and this would continue through -- it's -- 163. Continue through 163. I'm sorry.

Q. 151 through 163?

A. Yes. And then there are parts of 164 to 167.

Q. What parts?

A. I can't recall at this time. Again, it was a -- because I edited. They would have sent a statement or two, and then I put other language in there to make up the entire paragraph.

As I said, I'm struggling to answer your question because I don't feel as though they wrote the report. I wrote the report. They just gave me some sentences here and there.

Q. Anything after Paragraph 167?

A. No.

MR. BOGLE: Okay. We can take a break.

THE VIDEOGRAPHER: We are going off the record at 10:15 AM.

[A brief recess was taken.]

THE VIDEOGRAPHER: We are back on the record at 10:36 AM.

BY MR. BOGLE:

Q. Ms. Kinsey, to follow up on where we left off, do you have an understanding as to the process that AGI followed to create any of the exhibits they were responsible for creating in your report?

A. I don't understand your question.

Q. You want me to repeat or rephrase?

A. Rephrase.

Q. Okay. Do you have an understanding as to the methodology that AGI employed to create any of the exhibits that they created in your report?

A. So I'm con -- I don't understand your question as far as methodology. They -- I mean, they crunched the data for me.

Q. Okay. Do you know what process they followed to do so, sort of walking me through the process of what data they used, how they utilized it, how they crunched the numbers? That's what I'm asking.

A. Yes. That should all be in my papers that

were sent over.

Q. Okay. So for example, if we go to Exhibit G in your amended report. I believe this is one of the exhibits that you said that AGI was responsible for creating; right?

A. Yes.

Q. Can you walk me through the process of how they created this exhibit?

A. I don't understand the process you're talking about. They crunched the data, and then they took the data and they created a chart.

Q. What data did they crunch for this exhibit?

A. It's listed under the sources.

Q. So what data is that, though?

A. It's the data that was supplied in the case as part of discovery.

Q. So under Sources A, for example, what data is that?

A. I would have to pull that exact -- so it's going to be the DEA quota information as well as the HCP distribution information.

Q. And for sources under B, for example, it talks about the quota history for selected substances

from the DEA. Do you see that?

A. Yes.

Q. Is it your understanding that the quotas that are created by the DEA are for distributors to track their distribution of opioids?

A. No. Quotas are created by the DEA for manufacturers.

Q. So has there ever been a quota created for HBC, for example, for any opioid product by the DEA?

A. No.

Q. Going back to your invoices, Exhibit 6. You have that?

A. I do.

Q. On the first page for February 12th and 13th, one of the things you have listed is an interview with Rick Shaheen, security manager at Giant Eagle. Do you see that?

A. Yes.

Q. So he is a -- based on this, a current employee of Giant Eagle; is that right?

A. Yes.

Q. And what did you discuss with him?

A. It was really a conversation -- I was on the phone, so it was a conversation between Bob and

Rick, and we were just discussing the --

MR. BARNES: Hold on. If it involved counsel, I'm instructing you not to answer.

BY MR. BOGLE:

Q. Is Mr. Shaheen a lawyer, to your understanding?

A. No.

Q. Did your discussion with Mr. Shaheen impact in any way the opinions you're offering in this case?

A. No.

Q. So you didn't utilize anything that he told you in reaching any of your opinions? Is that your testimony?

A. Correct.

Q. Did you talk to anybody else at Giant Eagle about your work in this case?

A. I spoke a little bit with Jim Tsipakis.

Q. Say that name again.

A. Jim Tsipakis.

Q. And what did you talk to him about?

A. He was in my initial meeting when I came in and we were discussing pieces of the case to determine whether or not I was qualified to be their

expert witness.

Q. Did he provide you any information about HBC's suspicious order monitoring program over time?

MR. BARNES: Anything related to that meeting is privileged, but you can answer anything outside that meeting.

A. Not -- most of what I got from Jim came from his deposition.

BY MR. BOGLE:

Q. Anybody from Giant Eagle ever given you information about Giant Eagle or HBC's suspicious order monitoring programs?

A. Not outside the depositions that I've read.

Q. Have you talked to anybody else at Giant Eagle or HBC other than the two we've talked about?

A. I can't recall. I don't know if -- there may have been -- their internal counsel may have been there that same day. I can't recall.

Q. Is your understanding that Jim Tsipakis is an attorney?

A. No, he's not.

Q. Was the conversation involving him prior to you being retained as an expert in this case?

A. Yes.

Q. And since you had not been retained at that point, that's before you had started writing your report; right?

A. Correct.

Q. So I'll ask again. What did you talk about with Mr. Tsipakis?

MR. BARNES: If it was in the presence of counsel for HBC, I instruct you not to answer.

MR. BOGLE: Despite the fact that she's not operating as an ex -- in an expert capacity and she wasn't writing a report?

MR. BARNES: We're entitled to meet with experts.

MR. BOGLE: Okay. I'm just making sure I understand your objections when we raise it later. Okay, so you're instructing her not to answer, though?

MR. BARNES: Did you get that? Is that already on the record? Okay.

THE REPORTER: I mean, it's right there -- whatever you said.

MR. BARNES: Okay.

MR. BOGLE: I'm just making sure you are.

MR. BARNES: Yes. Yes.

MR. BOGLE: Okay.

BY MR. BOGLE:

Q. Have you spoken to anyone employed by GERx?

A. No.

Q. Have you ever been retained by Marcus & Shapira other than in this case?

A. No.

Q. And your rate for expert work in this case is $500 per hour; is that right?

A. Correct.

Q. Is that for all work, or does that differ depending on what type of work you're doing in the case?

A. It's for all work.

Q. For example, to make it clear, if you testify in trial, is it $500 an hour for that too?

A. Yes, it's a standard rate.

Q. Is $500 the same -- $500 an hour the same rate you've used for all expert work since 2014?

A. Yes. May -- possibly. I may have made a change a couple of -- about a year-and-a-half ago. I can't recall.

Q. So prior to a year-and-a-half ago, do you

think you were charging more or less than $500 an hour?

A. It's the standard rate. It's what I've been using, yes.

Q. So just to make sure I understand. Prior to a year-and-a-half ago, you did not change your rate?

A. I have not changed my -- I don't believe I have changed my rate.

Q. The invoices we looked at as Exhibit 6 -- did you create these?

A. Yes.

Q. Do you have anybody else that works for you at Kinsey Partners?

A. I have two people, yes.

Q. What do they do?

A. They are just administrative. They help run errands, clean my office, those things.

Q. Anybody that would assist you doing any substantive expert work?

A. No.

Q. Since you formed Kinsey Partners in 2014, what percentage of your income has come from work for pharmaceutical manufacturers, distributors, or pharmacies?

A. Will you just -- will you read that

question again, please?

Q. Sure. Since you formed Kinsey Partners in 2014, what percentage of your income has come from work for pharmaceutical manufacturers, distributors, or pharmacies?

A. Or pharm -- I would say almost 100 percent.

Q. Of that almost 100 percent, how much is related to expert litigation work like this?

A. Maybe 30 to 40 percent.

Q. And the remainder would be consulting; is that right?

A. Well, consulting and working as a pharmacist, yes.

Q. What percentage of your income since 2014 has come from working as a pharmacist?

A. I don't know. I haven't done the math.

Q. Well, for example, in 2018, approximately how much did you make dollar-wise working as a pharmacist?

A. I don't know. I'd have to look. In 2018?

Q. Yeah.

A. Maybe $50,000.

Q. Dollar-wise, how much have you made since

2014 from your work with pharmaceutical manufacturers, distributors, or pharmacies, total?

A. Oh. Since when?

Q. Since you formed Kinsey Partners in 2014.

MS. FUMERTON: Objection. Form.

A. I don't know. This is a math test. I would have to speculate --

MR. BARNES: Don't speculate.

A. -- and I know you don't want me to do that.

MR. BARNES: Don't speculate.

BY MR. BOGLE:

Q. You don't know?

A. I don't know.

Q. How about in 2018? Same question.

A. Again, almost 100 percent.

Q. I'm asking dollar figure, not percentage.

A. Oh, dollar figure. Roughly, approximately, just last year, 350, maybe.

Q. And in 2018, how much did you make dollar figure-wise for work not done for a pharmaceutical manufacturer, distributor, or pharmacy?

A. I'm sorry. Which date? Twenty nine --

Q. 2018. I'm just sticking with 2018.

A. Oh, 2018?

Q. Right. That's what I asked you in the prior question, so --

A. I'm sorry. It would all have been for a pharmacy or pharmacy manufacturer -- or pharmaceutical manufacturer or another manufacturer.

Q. Do you have any stock ownership in a pharmaceutical manufacturer presently?

A. Not directly. I don't know what it's in my mutual funds, but direct stock ownership, no.

Q. Do you have any stock ownership presently in any pharmaceutical distributor?

A. Not a specific pharmaceutical distributor, no. I have stock in Walmart, and so much as they are a pharmaceutical distributor, then I will disclose that.

Q. What's the current value of your stock in Walmart?

A. I don't know.

Q. Do you have any stocks in any other pharmacies that are publicly traded other than Walmart?

A. Not directly, no.

Q. When you say not directly, I want to make sure I know what that means.

A. Well, if they're in mutual funds. I'm not

a finance guy, so I don't know what's in the mutual funds.

Q. Since you opened Kinsey Partners in 2014, have you served as a paid consultant for any pharmaceutical distributor outside of your work in this case?

A. Yes.

Q. Which one?

A. Anda and AmerisourceBergen.

Q. What was the nature of your work with Anda?

A. It was responding to RFPs for retailers, so working on contracts.

Q. What was the nature of your work with ABC?

A. ABC has -- gosh, we've done a couple of different things, from inventory management to OTC, over-the-counter sets within their Good Neighbor Pharmacy division.

Q. Have you done any work related to suspicious order monitoring for controlled substances for ABC?

A. No.

Q. Since you opened Kinsey Partners in 2014, have you assisted any pharmaceutical manufacturer in

patenting any products?

A. No.

Q. Have you served as a key opinion leader for any pharmaceutical manufacturer or distributor or pharmacy since 2014?

MR. BARNES: Object to form. Do you know what key opinion leader means?

A. I mean, there's a number of -- I would ask you to clarify what you mean by key opinion leader.

BY MR. BOGLE:

Q. Have you been retained to sit on any boards or any meeting groups for any pharmacy, distributor, or manufacturer to provide your opinions?

A. No.

Q. I want to go to your testimony list in your report -- the amended report, which I think is -- let's see what the exhibit is on that. Exhibit B, it appears. Are you there?

A. Yes.

Q. Exhibit B is titled litigation support for Sandra K.B. Kinsey. Do you see that?

A. Yes.

Q. Do you view yourself as providing litigation support in this case?

A. Yes.

Q. And you give a description of each case starting on this page and carrying over for the next two-and-a-half pages for each case you've worked on during this time frame; right?

A. Yes.

Q. Now, for the -- each case you provide a description of the nature of cases except for -- strike that. You see there's a section that says nature of cases for each litigation?

A. Yes.

Q. And there's a description after nature of cases that provides the type of case and then a description of the case.

For example, if you look at the J & J talcum powder litigation, you say plaintiff alleges progressive lung disease, cancer, and other serious diseases are caused by inhalation of asbestos fibers from exposure to defendants' products. Do you see that?

A. Yes.

Q. You don't provide that kind of description for the opioid litigation, though, do you?

A. No.

Q. Is there a reason why that's the only case you don't provide that kind of narrative description for?

A. No.

Q. If you were to write one, what would it be?

A. I don't know. I'd have to think about it.

Q. And the cases on this list for these three pages go back to 2016; right?

A. Yes.

Q. Prior to 2016, had you served in an expert capacity in any case?

A. Not as an expert, no.

Q. So in what capacity did you work in a litigation setting prior to 2016, if not as an expert?

A. I --

MR. BARNES: Object to form. She didn't say that.

A. I worked as a 30(b)6 for Walmart back in my Walmart days.

BY MR. BOGLE:

Q. Okay. Any other sworn testimony that you provided prior to 2016?

A. No.

Q. And from 2016 to present, is this a complete list of cases in which you provided litigation support or expert witness work?

A. Yes.

Q. How many times have you testified in a deposition?

A. I believe it's eight. I think that's what I put in my -- eight.

Q. What page are you on?

A. Four.

Q. You note here eight depositions and testimony in four trials; right?

A. Correct.

Q. And for -- let's start with the depositions. Each of the depositions -- were those -- was that testimony offered on behalf of a corporation?

A. Yes.

Q. For each of the trials, was that testimony offered on behalf of a corporation?

A. Yes.

Q. So what we found on Pages 4 and 5 -- that's a complete list of your deposition and trial testimony; is that true?

A. Yes.

Q. Other than the 30(b)6? I'm sorry.

A. Yes.

Q. I'll grant you that. Which four trials did you testify in?

A. Concordia versus Winder, GlaxoSmithKline versus Glenmark. Testify or deposition?

Q. I'm asking about trial. You list --

A. Okay. I --

Q. You say you testified in four trials. That's what I'm asking you -- which four?

A. Right. That's what I'm trying to recall. So Valeant and ECI, Winder, Glaxo, and Teva. I can't remember the fourth one. Oh, the Concordia case was two trials. We had a PI hearing and then an actual trial.

Q. Any others?

A. No.

Q. Are there any other cases where you submitted an expert report but did not actually end up testifying in any capacity?

A. Yes.

Q. What case is that, or cases?

A. So some of these cases are still pending. I lost my CV. So I submitted an expert report in

GlaxoSmithKline versus Glenmark.

Q. Can you tell me where you're at?

A. I'm in my CV. When you look at my complete listing.

Q. So in your CV --

A. Page 2.

MR. BARNES: Of Exhibit B? Is that what you're referring to?

A. Oh, I'm sorry. Yes. Exhibit B, Page 2.

BY MR. BOGLE:

Q. Oh, so not your C -- the litigation support exhibit?

A. The litigation support. I'm sorry.

Q. Can you start over then, because I lost where you were at?

A. No problem. So if you want to start on -- let's start on Page --

Q. Let's do this. Stop there.

A. Okay.

Q. Let me repeat the question and we'll start over with the question.

A. Okay. All right.

Q. That's probably the best way to do this. My question was are there any other cases where you

submitted an expert report but have not actually offered any sort of testimony?

A. And testimony, do you mean by being deposed? I'm not an attorney, so --

Q. Any sworn testimony where you were put under oath.

A. Okay. Fair enough. So starting on Page 1, Concordia versus Lazarus. James Jah versus Glenmark. GlaxoSmithKline versus Glenmark. And I believe that's it.

Q. So going then back to the listing in Exhibit B of cases there, the J & J talcum powder litigation -- what are the nature of the opinions you're offering in that case?

A. It's around a retailer's standard processes regarding testing of branded OTC products.

Q. And what company are you testifying on behalf of?

A. It is in gen -- it will be different companies, but it will generally be retailers and distributors of the OTC products.

Q. And it looks like Barnes & Thornburg is the firm that retained you there?

A. Correct.

Q. Are you offering any opinions in that case that the retailers acted inappropriately in any fashion?

A. No.

Q. And how much approximately have you been paid for your work in that case?

A. Well, it's a number of different cases, and --

Q. That litigation, then. Let me rephrase it.

A. I --

Q. How much have you been paid to date for your work in that litigation -- the J & J talcum powder litigation?

A. Roughly $7,000 or $8,000.

Q. That case is still pending; right?

A. Oh, it's multiple cases.

Q. Those cases are still pending; right?

A. Some of them I believe have been settled or canceled or -- some of them are pending.

Q. Going then to the Heartland Medical LLC versus Express Scripts case -- what are the nature of the opinions you're offering in that case?

A. It was around diabetic testing supplies

and whether or not a pharmacy can adequately track all the way through the supply chain where the product came from.

Q. And who were you testifying for in that case?

A. On behalf of Heartland Medical.

Q. And are you offering any opinions that Heartland Medical acted inappropriately in any way in that case?

A. No.

Q. And how much have you been paid for that case so far?

A. I don't know. Sitting here today, I don't know.

Q. More than $50,000?

A. No.

Q. More than $20,000?

A. No.

Q. You have no approximation other than not more than $20,000?

A. It's -- it was a small engagement. That's what I can tell you. I would have to go back and look at the invoices to understand.

Q. The Concordia Pharmaceuticals, Inc.,

versus Lazarus case -- what are the nature of the opinions you're offering there?

A. It's around pharmacy practice regarding DESI drugs, the buying practices -- the general buying practices of retailers and drug substitution.

Q. Which company are you testifying for there?

A. On behalf of Lazarus.

Q. Are you testifying in that case that Lazarus acted inappropriately in any way?

A. No.

Q. And how much have you been paid for your work in that case?

A. Again, I'd have to go back and pull the invoices. Less than 20.

Q. The Valeant versus ECI and Virtus Pharmaceuticals case -- what are the nature of the opinions you're offering there?

A. It will be pharmacy practice, buying -- the buying practices, procurement and supply chain and drug substitution regarding DESI drugs.

Q. When you say DESI drugs, what does that mean?

A. It's a different kind of drug that doesn't

necessarily have an NDA, and so when the generic comes to market, the ability for a pharmacist to substitute isn't -- doesn't follow the normal pathway.

Q. And in that case, the Valeant Pharmaceuticals versus ECI and Virtus case, who are you testifying on behalf of?

A. On behalf of ECI Pharmaceuticals and Virtus Pharmaceuticals.

Q. Are you testifying in that case that either of those companies acted inappropriately in any way?

A. No.

Q. And how much have you been paid for your work in that case?

A. This one I don't recall.

Q. At all?

A. I am -- I would be uncomfortable giving you a number.

Q. The James Jah versus Glenmark Generics and others case there -- what are the nature of the opinions you're offering there?

A. This was around the requirement of a pharmacist to counsel or warn a patient about a side effect.

Q. What was the side effect?

A. This particular individual had a severe allergic reaction to a drug.

Q. And who are you testifying for in that case?

A. It was AmerisourceBergen.

Q. And are you testifying in that case that AmerisourceBergen did anything inappropriately?

A. No.

Q. How much have you been paid for your work in that case?

A. Less than $10,000.

Q. Takeda Pharmaceuticals versus West-Ward and Hikma -- what are the nature of the opinions you're offering there?

A. It's all around pharmacy practice, drug substitution, and the typical buying practices of retail pharmacies.

Q. Who were you testifying for there?

A. On behalf of West-Ward and Hikma.

Q. Are you testifying or have you testified that either of those companies acted inappropriately in any way?

A. No.

Q. And how much have you been paid for your work in that case?

A. I don't know. I didn't review those invoices.

Q. Do you have any approximation at all?

A. I don't.

Q. Concordia Pharmaceuticals versus Winder Labs and Steve Pressman. What are the nature of the opinions you're offering there?

A. It's around pharmacy practices, typical buying and supply chain distribution, and drug substitution.

Q. Who are you testifying for?

A. On behalf of Winder Labs and Steven Pressman.

Q. Have you offered any opinions that either of those -- or that company or individual acted inappropriately in any way?

A. No.

Q. How much have you been paid for your work in that case?

A. I don't recall.

Q. GlaxoSmithKline versus Teva. What are the name of the opinions you were offering in that case?

A. Pharmacy practice, drug substitution, and typical buying and purchasing patterns of pharmacy and drug supply chain.

Q. Who were you testifying for there?

A. On behalf of Teva Pharmaceuticals.

Q. Have you testified or will you testify that Teva acted inappropriately in any way?

A. No.

Q. How much have you paid -- how much have you been paid for your work on that case?

A. I don't recall.

Q. Any approximation?

A. No.

Q. GlaxoSmithKline versus Glenmark. What are the nature of the opinions in that case?

A. Pharmacy practice, drug substitution, supply chain management, typical buying practices.

Q. Who were you testifying for there?

A. Glenmark Pharmaceuticals.

Q. Are you testifying or have you testified that Glenmark has acted inappropriately in any way?

A. No.

Q. How much have you been paid for your work in that case?

A. I don't recall.

Q. Amneal Pharmaceuticals versus Reckitt Benckiser Pharmaceuticals and Idivior -- Idivior. I probably said that wrong. What are the nature of the opinions you're offering there?

A. Was around drug substitution and typical buying practices, supply chain and distribution.

Q. Who were you testifying for in that case?

A. Amneal.

Q. And did you testify or have you testified that Amneal acted inappropriately in any way?

A. No.

Q. How much have you been paid for your work in that case?

A. I don't recall, but it was less -- it was minimal.

Q. And what do you mean by minimal?

A. I don't recall.

Q. And then there's another entry for Concordia Pharmaceuticals versus Winder Labs and Steven Pressman. Is that a different case than -- it looks like the same case number as the one we just looked at a few cases ago.

A. It's the same case, but there's a

counterclaim.

Q. Did you provide more than one report in that case?

A. I have, yes.

Q. So as to this report for the 2016 injury you've got here, what are the nature of the opinions you're offering there?

A. Pharmacy practice, drug substitution, and the typical ordering practices for a supply chain and distribution.

Q. And I assume, but I want to be sure -- you're working for Winder Labs and Steven Pressman there again?

A. Yes.

Q. And have you testified or will you testify they acted inappropriately in any way?

A. No.

Q. And the last one you have listed here is on the next page, URL Pharma, Inc., versus Reckitt Benckiser, Inc. What are the nature of the opinions you're offering there?

A. I did some analysis. It wasn't -- I did some analysis for them regarding typical substitution when a new generic comes to market.

Q. And who were you working for there?
A. Reckitt Benckiser.
Q. And what do they do?
A. They're a manufacturer.
Q. And did you testify that Reckitt Benckiser did anything inappropriate?
A. Again, I did an analysis, so it wasn't -- I wasn't really rendering an opinion other than to give them an analysis.
Q. Did your analysis reach any conclusions that they had acted inappropriately in any way?
A. No.
Q. How much were you paid for your work in that case?
A. I don't recall.
Q. Have you ever testified before Congress?
A. No.
Q. Have you ever testified before a grand jury?
A. No.
Q. Have you ever given a sworn statement or sworn testimony to the FDA?
A. No.
Q. Have you ever given a sworn statement or

sworn testimony to the DEA?

A. No.

Q. Have you ever given a sworn statement or sworn testimony to the CDC?

A. No.

Q. Have you ever given a sworn statement or sworn testimony to any regulatory body?

A. Not that I can recall.

Q. And I understand from your report that you reviewed the Controlled Substances Act as part of your work in this case; is that right?

A. Yes.

Q. Had you reviewed that act in its entirety prior to your work in this litigation?

A. At some point in time in my training and education, I believe I have.

Q. Where at? Training and education for what company?

A. Well, no, I would say training and education as a pharmacist, that we would have studied the Controlled Substances Act -- definitely pieces of it -- in pharmacy school, and then I'm sure I reviewed it at some point in time during my time at Walmart in the various positions that I held.

Q. Do you recall how long it had been since you had reviewed it prior to your work in this case?

A. No.

Q. Can you go to Page 47 of your expert report, the amended version?

You say there in Paragraph 137 the DEA is overly ambiguous on what a suspicious order monitoring, SOM, system entails and does not approve or otherwise endorse any specific system for reporting suspicious orders, accepting both manual and technology enabled programs for the safety of controlled substances as long as the policies and procedures meet the regulations.

Do you see that?

A. Yes.

Q. What did you mean here by overly ambiguous in this regard?

A. Well, in my opinion, the DEA does not specify specifically what a distributor needs to do as part of the suspicious order monitoring system. They specifically are purposely ambiguous, saying that each organization needs to design and develop a system that is consistent with and specific to their type of business.

Q. Do you intend to testify the DEA has a duty to be more specific in this regard?

A. No.

Q. Do you think the DEA has acted inappropriately in not providing more detail in this regard?

A. No. No.

Q. And would you agree that as to the construct of a suspicious order monitoring program for each individual company, that that company is in a better position to determine what type of program works for them than the DEA is?

MS. FUMERTON: Objection. Form.

A. I don't know -- I think it is smart of the DEA to understand that everybody's business is different, and that it's also smart of the DEA to be -- not specifically clarify, because technology changes, business policies and programs change.

And so I respect the fact that they're not specific, they are overly ambiguous, so that companies can design programs that specifically match their type of business, size, market.

BY MR. BOGLE:

Q. Okay. Are you done?

A. Yes. Thank you.

Q. Yeah. Looked like you were still thinking; I just wanted to be sure.

So the next paragraph, Paragraph 138, you say Giant Eagle complies with all regulations and actively maintains a complex SOM system of integrated controls that has been part of their standard operating procedures for decades.

Do you see that?

A. Yes.

Q. So when you reference, just so I'm clear, Giant Eagle here, are you talking about them as one and the same with HBC or different in this paragraph?

A. I'm representing Giant Eagle as an entity when I speak to their SOM system.

Q. Okay. Let me ask it a little different way to make sure we're clear. The statement I just read from Paragraph 138, are you meaning that to include the SOM systems over time for HBC?

A. Yes, I'm including those systems as well.

Q. So when you referenced standard operating procedures here, which standard operating procedures are you referring to? Is there somewhere you could point me to what you looked at?

A. Well, within Giant Eagle again. Their SOM system as they define it is integrated controls that includes the pharmacy, the distributor, as well as their corporate office.

So their policies and procedures to prevent theft and diversion are all of the operational activities that occur within those three entities, or I should say within the one entity but within those three distinct groups.

Q. So in formulating the statement you wrote in Paragraph 138 here, did you review any specific standard operating procedures?

A. I reviewed sworn testimony and I looked at exhibits -- and along with that and my knowledge of pharmacy practice and the laws that govern pharmacy and pharmacists and state boards of pharmacy. So it's all included.

Q. Yeah, so I'm just trying to figure out what specific procedures you looked at. So am I safe to take from that answer that any specific standard operating procedures that you reviewed -- when I mean specific, specific to Giant Eagle or HBC -- would be located in the deposition transcripts in your reliance materials or the exhibits thereto?

A. The things specifics to Giant Eagle, yes.

Q. Are any of the standard operating procedures you reviewed for Giant Eagle or HBC specific to compliance with the Controlled Substances Act?

A. There is information in the depositions, yes.

Q. When you say information, are you referring to specific standard operating procedures?

A. I mean, I get -- there's -- and I apologize if I'm confused, but as people are speaking to the different policies and procedures, some of them are written, some of them are unwritten. It just goes towards their general practices that all combine to make up their suspicious order monitoring system.

Q. At what point in time did HBC first have a written policy concerning compliance with the Controlled Substances Act?

A. I don't recall. I don't know. I know there is a date -- I believe -- there's a date that's been thrown out there, the first piece of paper that they were able to find with regards to discovery, but that these operational procedures existed long before then.

Q. In written form?

A. We don't know. I know that as part of discovery, which was what came out in the testimony, that as part of discovery they were only able to find beginning on a certain date, but that people have testified that these operational procedures existed long before then.

Q. Have you been able to find any written standard operating procedures related to Controlled Substances Act compliance other than what was discussed in the depositions?

A. I only reviewed what was in the depositions.

Q. Do you agree there's an ongoing opioid epidemic in this country?

A. I would agree that, yes.

Q. And do you agree that opioid diversion is a cause of that epidemic?

A. The opioid epidemic is -- it has a number of components associated with it. I don't believe that it stems from the closed-loop controlled system of legitimate prescriptions.

Q. Do you think that opioid diversion is a cause of the epidemic?

MS. FUMERTON: Object to form.

MR. BARNES: Asked and answered also.

A. Again, I don't believe that when there's sworn testimony that 99.9 percent of prescriptions are written legit -- for legitimate reasons and dispensed appropriately, I don't believe the remaining has contributed to the opioid crisis.

BY MR. BOGLE:

Q. You referenced 99.9 percent of prescriptions being legitimate. Have you seen any sort of underlying data or statistical analysis to support that finding?

A. No, it was as part of the sworn testimony of high-ranking individuals within the U.S.

Q. Okay, but have you seen any actual data to support that?

A. Not directly, no.

Q. Are you aware of any data indirectly to support that?

A. Well, I'm sure he has some information. I mean, if they're saying it, I'm certain he has some information to back it up.

Q. Have you seen anything in the public sphere or any private documents that you reviewed that show that that data is accurate?

A. Again, I'm relying on other people within the industry, other respectable and credible individuals within the industry, to relay that information accurately.

Q. Okay, but you're not aware of any data that supports that yourself?

A. Again, I believe that these individuals that are speaking and testifying in court and using this information have data to back up their statements.

Q. Okay, but I don't think that's what I asked you. I'm asking if you're aware of any data that supports the statement.

A. I myself have not seen any data. I rely on the fact that they are using data to support their statements.

Q. Let's take a look at your CV real quick, in the amended report, which I think is Exhibit A to the report.

Is this a CV that you prepared yourself?

A. Yes.

Q. When did you prepare it or last update it?

A. Probably, well, March. March or April of this year.

Q. Is this the same CV that you use for

non-litigation work?

A. Yes.

Q. Has the DEA ever retained you to assist it in evaluating any issue?

A. No.

Q. Has the FDA ever retained you to assist it in evaluating any issue?

A. No.

Q. Has any other regulatory body hired you to evaluate it in assisting (sic) any issue?

A. No.

Q. Are you a member of any professional organizations currently?

A. Yes.

Q. Which ones?

A. The American Society of Pharmacy Law, the American Pharmacists Association, the Arkansas Pharmacy Association, and the American Society of Healthcare Professionals, I believe it is, and the Healthcare Businesswomen's Association.

Q. Are there any other professional organizations you've been a member of in the last five years that you're not presently a member of?

A. I don't believe so.

Q. Are all of the materials that you relied on to form your opinions in this case found in your materials considered list and your additional materials considered list?

A. Yes.

Q. Were you granted access to any document databases to do any searches on production documents in this case?

A. No.

Q. Let's go to Exhibit C of your amended report, which is the list of materials reviewed or considered. The first section you have there are pleadings and materials related to pleadings.

Do you see that?

A. Yes.

Q. And did you specifically select these pleadings to review?

A. No.

Q. Did you ask for any specific pleadings?

A. No.

Q. How did you come about getting these pleadings, then?

A. They were e-mailed to me by counsel.

Q. The next section is expert reports,

including exhibits therein.

Do you see that?

A. Yes.

Q. And did you specifically select these experts to review -- expert reports to review?

A. No.

Q. How did you come to get these specific list of reports?

A. They were e-mailed to me by counsel.

Q. So that selection was made by them as far as what to send you?

A. Yes.

Q. Is the same true for the expert reports and depositions that you list in your additional documents reviewed, which is Exhibit 5?

A. Yes.

Q. And going back to the list in your amended exhibit -- or amended expert report, you have depositions, including exhibits therein, as well.

Did you specifically select those depositions to review?

A. No.

Q. Were those given to you by counsel at their choosing?

A. Yes.

Q. And for the expert reports and depositions, the reference to exhibits -- did you look at all the exhibits to both the reports and depositions that are cited here?

A. The ones that -- I would have scanned them or looked at them as part of my reading of these documents.

Q. Now, the expert reports, for example, listed in your amended report and the additional documents considered -- did you review those reports in their entirety?

A. For the most part I did, yes.

Q. Are there any that stand out to you that you did not review in their entirety?

A. There were times that I just skipped to certain sections that I felt were most applicable to HBC.

Q. What sections would you have focused on?

A. Well, I would have scanned over things that related to manufacturers, potentially other distributors in the case. So I would skip certain sections that didn't necessarily pertain to Giant Eagle and HBC.

Q. The depositions that you reviewed in this case -- did you review the depositions in their entirety?

A. I scanned them, yes.

Q. When you say scanned them, what do you mean?

A. Well, for the most part I read them. Did I read them word-for-word? No. Would I skip certain sections? Yes.

Q. Now, on the expert reports that you list here in your amended expert report -- strike that.

For the expert reports that you reviewed as part of your amended expert report listing here, do you intend to offer any specific criticisms of those experts outside of what's listed in your report currently?

A. As of today's date, no, I don't intend outside of what I've already done, but it doesn't mean that I won't later on.

Q. Do you have any present intention of doing so?

A. Not at this time.

Q. And from my review of your report and amended report, the only expert listed here that you

provide criticisms of is Craig McCann; is that right?

A. Yes.

Q. Going back to the materials considered list, you've got websites, articles, and other online materials. Do you see that?

A. Yes.

Q. Are these materials that you specifically reviewed for your work in this litigation?

A. Yes.

Q. Are there any of these materials -- these list of 39 here -- that you had reviewed prior to your work in this case?

A. Yes.

Q. Which ones?

A. I don't know.

Q. Do you know of any of these in this list of 39 that you definitely had not reviewed prior to your work in this case?

A. So for -- and I don't know that I can give you a complete list without spending time scanning. For example, Number 30 -- I have seen that prior to writing this expert report.

Q. You said you had seen that?

A. I have seen it, yes, because I've used

that before.

Q. 30, you said?

A. Uh-huh. But there aren't many of them that are like that. I would have to -- that's the first one that comes to mind.

Q. Were these 39 documents here on this list -- were these pulled through your independent research?

A. Yes.

Q. We'll just look at a couple of these for example. The Number 4 on your list, article lead author Rosenblum.

A. Uh-huh.

Q. Had you read that article prior to your work in this case?

A. No.

Q. Did you pull that article yourself, or was it provided to you?

A. No, I pulled that.

Q. Number 2, the article lead author Bondell. Had you reviewed that article prior to your work in this case?

A. No.

Q. Did you pull that, or was it provided to

you?

A. I pulled it.

Q. What process did you use to search for these medical journal articles, like Number 2 and Number 4?

A. Google.

Q. Are there any medical journal articles that you reviewed for your work in this case but didn't include on this list?

A. Yes.

Q. Is there a reason why you didn't include those on your list?

A. Because they didn't help in forming my opinions.

Q. Have you created any demonstrative exhibits that you plan to use at trial, outside of what's contained in your report?

A. No. Doesn't mean that I won't, but I don't have -- I haven't done it yet.

MR. BOGLE: Let's take a five-minute restroom break real quick. I'm going to reset, move on to a different subject.

MR. BARNES: Okay.

THE VIDEOGRAPHER: We are going off the

record at 11:35 AM.

[A brief recess was taken.]

THE VIDEOGRAPHER: We are back on the record at 11:58 AM.

BY MR. BOGLE:

Q. Before we broke, I asked you if you had created any demonstrative exhibits for trial, and I believe you said not at this time. Is that right?

A. Yes.

Q. Are there any that you plan to create but have not started working on yet?

A. I don't know. I mean, until it gets down when we get to trial and we determine what my testimony is going to be and whether or not other demonstratives are needed, I don't know how to -- I just don't know right now.

Q. Do you intend to testify as to what patient populations should appropriately take opioids?

A. No.

Q. Let's go back to your amended expert report. And I'm on Page 6, please. So I'm under summary of expert opinions there.

And for A, you say as a board licensed pharmacist with over 25 years of experience, I find

that opioids are effective and essential drugs for pain management when used appropriately.

Do you see that?

A. Yes.

Q. What are you relying on to support that conclusion as to the efficacy of opioids?

A. Well -- first of all, they're safe and effective because they were approved by the FDA and granted both NDAs and ANDAs. So we know they're safe, we know they're effective.

And given my 25 years of experience as a pharmacist, I can vouch for the fact that there are thousands and thousands of patients that have taken them and they work for them.

Q. Have you conducted any sort of systematic analysis of those patients as to the efficacy they received?

A. No, I don't need to. Again, the drug was proven safe and effective by the FDA.

Q. So as to this opinion here as to opioids being effective and essential drugs, outside of your experience as a pharmacist that you've just referenced and it being approved by the FDA, is there anything else you intend to rely on for that statement?

A. Well, it's my years of experience. It's the data that shows that it's constantly being prescribed. It is the materials that I have reviewed and it's referenced to them being in evidence-based protocols. I mean, it's a multitude of information that points to the fact that these drugs are effective.

Q. What as far as stuff that you've cited to are you talking about that you're referring to on this point?

A. Well, when you think about the World Health Organization and their analgesic ladder, when you read about the information from other key opinions leaders and the testimony in this case speaks to the efficacy of these drugs to treat pain.

Q. The testimony from who?

A. There are other experts in this case that have testified to the effectiveness of these drugs.

Q. Which ones have you reviewed on that point?

A. I just recently re -- read it on the additional documents reviewed. It was either Hughes or Dombrowski, and I apologize, I can't recall which one.

Q. So you're relying on either one of those

two individuals considering the efficacy of the drug as well?

A. It just goes to further supporting my opinion. There was lots of information that I reviewed that I looked at on the internet that is going to support this.

Q. Like what?

A. Other articles, things that other physicians and key opinion leaders have brought forth.

Q. Anything outside of what's in your materials considered list as far as articles go?

A. I mean, I looked at -- as I said before, I looked at a lot of articles, but they didn't necessarily add to or change my opinion.

Q. But are there any medical journal articles you intend to rely on for this point outside of what's listed in your materials considered?

A. Not at this point, no.

Q. And the WHO analgesic ladder you're referring to related to treatment of cancer patients; right?

A. It was originally developed to treat cancer patients and then has been supplemented to actually work outside work on noncancer pain, and

they've even supplemented it to look at acute pain.

Q. The WHO has supplemented it?

A. The other -- no, key opinion leaders have supplemented it.

Q. So the next sentence under A in your summary of expert opinions says the vast majority of opioid prescriptions are written for legitimate reasons and consumed by patients according to prescribers' directions without undue or long-lasting harm to the patient.

Do you see that?

A. Yes.

Q. What are you specifically relying on to support that statement?

A. Again, it's 25 years of experience, my training as a pharmacist, the fact that the products are approved by the FDA and continue to remain in market, opinions of physicians and other key opinion leaders in the market, as well as the information provided in testimony.

I believe -- and I don't want to mess up his name -- Rannazzisi speaks to the legitimacy of the prescriptions and how many prescriptions are actually written for legitimate reasons.

Q. So you're citing to the Rannazzisi -- is that the Deposition Exhibit 8 you're talking about here?

A. Yes, his information in general. That's Exhibit 8. There are other things that I have reviewed, but you're asking me -- I've read so much material, it's hard for me to specifically point to the exact place that I got the information, outside of what I've already cited.

Q. Have you undertaken any quantitative analysis as to how many patients legitimately use opioids?

A. I have not, no.

Q. Have you done any quantitative analysis as to how many patients consume opioids according to their prescriber's directions?

A. No.

Q. Have you done any quantitative analysis as to how many patients consume opioids without undue or long-lasting harm to themselves?

A. I haven't done any specific analysis because my experience tells me and the number of patients that I have treated tells me that these are safe, they're effective products, and when they're used

appropriately they will not cause long-lasting harm to the patient.

Q. So for that point you're relying on your experience; is that true?

A. My experience, working as a pharmacist, working with physicians, the articles that I have read, my training, and the endorsements by the FDA.

Q. Have you seen any FDA endorsements to the point of majority of patients taking opioids do so without undue or long-lasting harm?

A. Well, just the fact that the FDA has granted them a new drug application or an abbreviated new drug application -- the FDA controls what drugs are available in market for sale, and the fact that the FDA leaves these products in market signals to all health care providers that these products have been proven both safe and effective.

Q. So you're relying on FDA approval for the point of the vast majority of patients taking the drugs without undue or long-lasting harm? Am I understanding you right?

A. What I'm saying is the fact that the FDA approves these products for safety and efficacy means that when taken appropriately they are safe. That is

what the FDA is telling the health care community.

Q. What are the appropriate ways to take opioids?

A. Per your physician's instructions.

Q. Any other?

A. Well, I am not a physician, so it is -- as a prescriber, you have the relationship with the patient to determine their level of pain, their tolerance, any side effects, any systemic issues with their kidneys and liver.

So it is the -- the relationship exists between the prescriber and the patient to determine what is appropriate for them and the amount of pain that they are experiencing.

Q. Under B there, you say patients are increasingly aware of the benefits and risks of pain medications, including opioids.

Do you see that?

A. Yes.

Q. What are you relying on for that statement?

A. Just general information as a pharmacist, the things that you read in the media. There is a lot of information now bubbling up about opioids and the

terms that have been used between opioid crisis and opioid epidemic.

People have -- they're increasingly aware, they're extremely sensitive to these types of drugs, and when they're prescribed they have lots of questions, and we supply them with information.

Q. Have you undertaken any formal analysis as to patient awareness on the risks or benefits of opioids?

A. No formal analysis, no.

Q. Under C there, the second sentence, you say if pain is not resolved or is expected to be moderate to severe intensity, evidence-based treatment protocols recommend opioid/acetaminophen combination products.

Do you see that?

A. Yes.

Q. And you cite to an article by Bondell. Do you see that there?

A. Yes.

Q. Any other articles you intend to rely on for that point?

A. Well, this is also where the World Health Organization's analgesic ladder comes in.

Q. As to cancer patients?

A. Again, it -- yes, it was originally created for cancer patients, but then has been amended or has been widely accepted to be amended to include noncancer patients.

Q. What do you rely on to say it's been widely accepted in that regard?

A. The fact that it's been published in several different countries that -- and it's part of the article, the review articles that these doctors are referring back to.

Q. Do you consider the fact that the WHO hasn't modified the analgesic ladder as being important at all to that opinion?

A. I just think that -- can you -- will you ask that question again, please?

Q. Sure. Do you consider the fact that the WHO has not modified their own analgesic ladder in the way you're describing as being important or not to that opinion?

A. I don't think so. I think a lot of times a protocol is adopted for a particular situation, and then that adoption gets expanded and applied to other situations where -- and it becomes widely acceptable.

Q. So is there anything else you intend to rely on for the statement I just read here, that if pain is not resolved or is expected to be moderate to severe intensity, evidence-based treatment protocols recommend opioid/acetaminophen combination products?

A. Not at this time.

Q. If you can go to the next page, Page 7 of your report. Are you there?

A. Uh-huh.

Q. Oh, okay. You're already -- I'm looking at F. You say there as part of the prescription filling process, a pharmacist often communicates with prescribers regarding an opioid prescription to discuss the drug, strength, dose, or frequency of utilization for a specific patient.

Do you see that?

A. Yes.

Q. Do you intend to specify -- or strike that.

Do you intend to testify specifically about any interaction between anyone at Giant Eagle and any specific patient in this regard?

A. No. Wait, let me ask the question again. I mean, I have read testimony that says that they have

also done this. So besides me doing it as a pharmacist and recognizing the fact that it is part of our standard practice as a pharmacist, there is testimony from Giant Eagle employees that they also engage in this behavior.

Q. Okay. I think my question was specific to whether you intend to testify about any specific interaction between a Giant Eagle pharmacist or other employee and a patient in this regard.

A. Not a specific employee or a specific patient, no.

Q. If you go to Page 8 of your report. And under G about two-thirds of the way down through G where it says the DEA has left it.

A. Uh-huh.

Q. Do you see that sentence?

A. Yes.

Q. It says the DEA has left it substantially to the discretion of each registrant to design and operate its system to comply with the security requirement, and such system must be able to disclose suspicious orders when discovered, and then you cite to the regulation.

Do you see that?

A. Yes.

Q. What is your understanding of how long a registrant has to report a suspicious order after it's discovered?

A. So the registrant needs to report it immediately after it has determined that it is suspicious.

Q. The -- strike that.

Are you aware of any substantive changes to the Controlled Substances Act since 1970?

A. Not that I can recall, no.

Q. If you go to H on that same page, you say captive self-distributors for prescription products fulfill orders that will replenish shelf stock for items that have already been dispensed.

You see that sentence?

A. Yes.

Q. What is your understanding of Giant Eagle's policy as to when they order opioid products in relationship to how much they have left on their shelf?

A. Ask that question again.

Q. Yeah. What is your understanding of Giant Eagle's policy as to when they order opioid products in relationship to how much of that product they have left

on their shelf?

A. Well, the way the system works, if that's what you're asking me, is -- the process is that when a prescription is dispensed, the inventory is automatically decremented from their prescription management system, and then at the end of the day all of the orders are aggregated and that ends up what gets ordered then from the distributor.

Q. And you're talking about Giant Eagle specifically?

A. I'm talking about Giant Eagle specifically.

Q. So for example, if there are 10 bottles of opioid acetaminophen combination products that they have, they sell one bottle, the next day they would replenish with another bottle? Is that what you're saying?

A. More than likely, yes, because it's done -- it's an automated process, and they determine -- they can do min/max shelf quantities. There are different things that they can do within the inventory system to hold a certain amount of product on the shelf in order to accommodate the fluctuations in volume, but in general what happens is you sell a

bottle, you order a bottle.

Q. And how long has that specific process been in place at Giant Eagle?

A. For years.

Q. Do you have any more specific --

A. Several years. Decades.

Q. Decades? Okay.

The next sentence, you say therefore artificially limiting order quantities, preventing shipments, and delaying orders unnecessarily can interrupt patient care and cause further harm.

Do you see that?

A. Yes.

Q. You would agree that any necessary interruption, though, would be appropriate; right?

MR. BARNES: Objection to form. Vague.

A. I'm struggling to answer that question because a necessary interruption -- could it cause patient harm? If you interrupt an order, could it cause patient harm? Yes.

BY MR. BOGLE:

Q. But would it be necessary to do so if that order was suspicious?

MR. BARNES: Object to form. Vague again.

A. If the order is suspicious, one needs to determine why it's suspicious and we're going to -- this definition of suspicious. The -- it needs -- what needs to be determined is whether or not if the product is released -- anyway, if it's determined that it is suspicious, then the order will be stopped.

BY MR. BOGLE:

Q. And it necessarily should be; right?

A. If it is determined to be suspicious, it will be stopped.

Q. And my question was a little different. It should be under the Controlled Substances Act; right?

A. Well --

MS. FUMERTON: Objection. Form. Calls for a legal conclusion.

A. If it's a suspicious order it will be stopped. I mean, one -- is it necessary to be stopped? Again, as a patient responsibility what I'm going to tell you is that if it's suspicious it will be stopped.

BY MR. BOGLE:

Q. And just to address the objection and make sure I understand it, are you not testifying about what the Controlled Substances Act requires as it pertains

to suspicious order monitoring? Is that not part of your testimony?

A. No, I'm speaking -- I am testifying to the suspicious order monitoring system at Giant Eagle.

Q. And whether or not that complies with the Controlled Substances Act; right?

A. Correct.

Q. On the next page -- I'm looking at I -- the second sentence there says recognizing the complex differences to the core organization, Giant Eagle built a pharmacy infrastructure that is separate from its main grocery business in order to focus on patient care, prescription delivery and cost, supply chain, regulatory compliance, training, and other health-related business services.

Do you see that?

A. Yes.

Q. This separate infrastructure -- what are you relying on to say that that separate pharmacy infrastructure was created for the purpose of -- one of its purposes being regulatory compliance?

A. Well, based on the testimony that I read and looking at the org charts that I saw, you can determine that they have a separate legal

infrastructure -- or not separate legal -- separate pharmacy infrastructure that is different from their broader business, and they created this infrastructure in order to concentrate on the areas that are different -- that are unique to pharmacy that are different from the rest of their grocery business.

Q. What documentary evidence do you intend to rely on to support that this infrastructure was created and one of its purposes for -- is for regulatory compliance. You mentioned org charts. Anything else?

A. It's what's in the testimony that I read.

Q. So testimony, org charts. Anything else?

A. No.

Q. Anybody's testimony in specific you're relying on for that point?

A. I can't recall at this time. It was mentioned several times.

Q. Going down to J, the second sentence there, you say because of the heightened sensitivity concerning controlled substances and opioids in particular, additional parameters are engaged that exceed regulatory minimums.

Do you see that?

A. Yes.

Q. And you're talking about Giant Eagle or HBC specifically here; right?

A. Yes.

Q. And what specific parameters are you referring to here that exceed regulatory minimums?

A. There are different operating policies and procedures that are not required -- they're not required legally. For example, the quantity and the number of times that they do an inventory count, within HBC itself they're actually doing inventory counts five times a day. They do them at the beginning of a shift; they do it at break; they do it at lunch; they do it in the afternoon break, and they do it before they leave. That far exceeds any regulatory parameters.

The store level, same thing. They do controlled substance inventory counts specific around opioids doing back counts, monthly narcotic orders, those -- where they're actively looking at the accuracy of their inventory on a much more consistent and constant basis than what the law requires.

Q. Any other parameters that you intend to testify about other than what you mentioned here as far as inventory counts?

A. Those are the ones that come to mind right

now.

Well, I mean, and I can mention -- I mean, as we sit here, I can mention things. Security controls with cameras and guards. They have redundant security between what belongs in the pharmacy, including the box that Giant Eagle sits in.

So I mean, it's a repet -- I mean, it goes on and on. It's not just the inventory counts, but as I sit here today, those are the two that come to mind easiest.

Q. And these security controls you're referencing -- that's an attempt to prevent theft from the distribution center or the pharmacy itself; right?

A. It's both. Theft and diversion, yes.

Q. Right. So from people, either the employees or somebody coming into a pharmacy taking the medications; right?

A. That -- yes.

Q. Stealing them?

A. But it's also to ensure that operational procedures are being followed. They're not specifically to look at theft. They're to monitor the entire operations and ensure that they have a closed supply chain and a closed loop of distribution.

Q. What security controls do you intend to testify are specifically aimed at ensuring that suspicious orders are properly flagged and blocked?

MR. BARNES: Just so we're clear, are you asking her other than what's in her report, or --

MR. BOGLE: No, I'm asking generally.

MR. BARNES: So if you need to refer to your report to answer the question, feel free.

A. Right. So ask your question again.

BY MR. BOGLE:

Q. What security controls do you intend to testify are specifically aimed at ensuring that suspicious orders for opioids are flagged and blocked?

A. Everything that I've put in my report. When you look at GE's different security and the different pieces that they have in place when it comes to security and the systems that they use, the operational procedures they employ, the people that they have hired and they employ, it all works together as part of their process for suspicious order monitoring.

Q. Is there a specific written policy or procedure that you intend to rely on to support the notion that -- strike that.

Is there a specific policy or procedure that you intend to rely on, written policy or procedure you intend to rely on, to support the notion that Giant Eagle or HBC exceeds regulatory minimums as it pertains to detecting suspicious opioid orders?

MR. BARNES: Objection. Asked and answered several times now.

A. Again, I don't believe that a single policy or a single procedure can adequately describe the suspicious order monitoring system that exists at Giant Eagle.

BY MR. BOGLE:

Q. Is there a set of policies or procedures you're relying on in that regard?

A. It is a -- it's part of the general business practices as a pharmacy, as a pharmacist. It's -- as I've said in my report, it's a complex integrated system that involves the stores, the distribution center, and the corporate office.

Q. Right, and I'm focusing on a specific area of that, which is -- are written policies and procedures. I'm just trying to ascertain in this deposition what written policies or procedures you intend to rely on to say that Giant Eagle or HBC has

exceeded regulatory minimums as it applies to suspicious order monitoring for controlled substances.

A. And I understand you're trying to -- you're asking me about specific written documentation.

Q. Right.

A. And I can't -- I'm not going to rely on specific written documentation when I have reviewed all of this information and I understand how the process works. I'm not going to rely on -- on a vast complex program, to rely on a document or a set of documents.

Q. Is it important to you from your perspective for there to be written policies and procedures documenting what should be done to detect suspicious orders of controlled substances?

A. So there are certain things that need to be put in writing, and as systems have evolved and the business acumen has evolved, things that -- policies, procedures, typical pharmacy practices have more and more been written down.

Does it all have to be in writing? No, it doesn't. It comes from years of training, schooling, expertise, and years in the industry to know that these policies and procedures and the things that you follow all contribute to the prevention of theft and diversion

of opioids.

Q. What aspects of suspicious order monitoring programs should be put in writing?

A. That's up to the organization. I'm not going to make that determination of what needs to be in writing or not in writing. I'm also not an attorney.

Q. Has anyone ever asked you or consulted with you as to what sort of policies and procedures should be put in writing for their company as it pertains to suspicious order monitoring?

A. No.

Q. You say under K on Page 9, the first sentence, Giant Eagle is and always has been compliant with the Controlled Substances Act.

Do you see that?

A. Yes.

Q. First of all, you say has always been. What was your review period for this case? How far back did you go to make this assessment?

A. I have been relying on the testimony of the other Giant Eagle employees in this particular case, reading their sworn statements and testimony.

Q. So -- but do you have any time parameters in mind based on that? You're saying has always been

compliant. Are you saying since 1970, when the Controlled Substances Act was implemented, or some other time? I'm just trying to get a sense of what that means.

A. Right. So I'm relying on the sworn testimony of other Giant Eagle employees that have said that they are in compliance.

Q. Did you undertake your own assessment outside of the review of their testimony on that point?

A. My review would be current and existing, so based on their testimony and what I understand in the industry and through my experience, I have determined that yes, they are currently -- they are in compliance.

Q. So outside of your review of the deposition testimony and your general experience as a pharmacist, what else are you relying on specifically as to HBC to say that they have always been compliant with the Controlled Substances Act?

A. Well, you also have to look at the fact that they've been licensed; they are licensed and inspected by the DEA, they are licensed and inspected by the state boards of pharmacies, and by having those licenses, each of those governing boards are consenting

to the fact that they are in compliance and they can continue to dispense such products and they have never been -- they're not -- so they've never been cited by the DEA with any type of deficiency.

So given the governing boards that govern our practice of pharmacy and the distributors, one can rely on the fact that these government agencies, the licensing boards, are giving them the license to continue practicing and to continue distributing in every store and from the distribution centers.

Q. So is it your testimony that our jury in this case can rely on the fact that HBC and Giant Eagle have been licensed, and that's enough for them to support a conclusion that they haven't been involved in any diversionary activities?

A. I believe it's a combination of information, but yes, licensing speaks a lot. We are licensed. They have come in. They have licensed the facility, HBC in specifics. They came in and they do a preinspection, making sure that all the security requirements are being met. They come back in before they even allow them to start distributing. They come back in again after six months.

These are accredited -- these are state --

I don't even know the word for it, but these are licensing bodies that come in and are telling everybody that these facilities, these pharmacies, the professionals that are working in the pharmacies, are all licensed and have the credibility, the education, the authority. They're meeting all of the licensing requirements, they're following the state laws, they can continue -- they can begin and continue distributing and dispensing these particular products.

Q. Have you reviewed any audits or inspections by any licensing authority as to HBC?

A. Personally I have not reviewed, but based on the testimony that I read, I understand that the DEA has not sanctioned HBC for any reason.

Q. But I just want to make sure I'm understanding. You have not reviewed any actual licensing audits or inspections yourself; true?

A. That is correct.

Q. Have you reviewed any internal audits or inspections done by ABC on itself as to its suspicious order monitoring practices?

A. Done by ABC?

Q. I should have said HBC. Sorry.

A. Oh. And I have not --

Q. -- I may have said ABC. I meant HBC.

A. That's all right. I did not -- I have not reviewed any audits. I am going strictly off of the testimony that says that they have had no deficits.

Q. So outside of what we've just discussed here, anything else you're relying on for the conclusion that Giant Eagle is and has always been compliant with the Controlled Substances Act?

A. For now -- that's the answer to my question, or to your question for now, that those are the things that I'm going to be relying on.

Q. If you can go to Page 10 of your report. I'm looking at Paragraph 18. You say opioids have been regarded for millennia as among the most effective drugs for the treatment of pain.

Do you see that?

A. Yes.

Q. And then you cite to an article by Rosenblum; right?

A. Yes.

Q. Any other articles or documentation you intend to rely on for this point?

A. No. Other than -- and if I -- I'm going to add to that. Other than the fact, again, that these

are FDA-approved products.

Q. So the fact that they're FDA-approved and the article you've cited to here. Anything else?

A. For this particular -- no, that is what I relied upon. And my experience and my training and all of the other things that we've already spoken of.

Q. From a documentation perspective, though, anything else?

A. From a documentation perspective, that is it.

Q. If you can go to Page 14 of your report. I'm looking at Paragraph 30 that starts on that page. It says -- let's see. One, two, three -- I think four sentences in there where it says although the increase.

Do you see that?

A. Uh-huh.

Q. Is that a yes?

A. Yes. I'm sorry.

Q. Although the increase in prescription drug abuse is likely to be multifactorial, it is likely to reflect in part changes in available drug formulations and prescribing practices of opioid medication.

Do you see that?

A. Yes.

Q. What are you specifically relying on from a documentation perspective to support that statement?

A. The -- it's my general knowledge of the industry being a pharmacist, my years of training. I mean, I work with this all the time. Being in the -- working at the oncology clinic and really looking at opioids and understanding the changes in the prescriptions that are being filled -- being written, being filled, and how the prescriptions are changing due to the different formulations and restrictions by the insurers and what they're requiring.

Q. Anything from a documentation perspective you're relying on for this?

MR. BARNES: Object to form. When you say documentation, are you talking about her whole body of knowledge and experience, or documentation in this case?

MR. BOGLE: Well, knowledge and experience are not documents.

MR. BARNES: Well they can be. You go to a professional education seminar, you read an outline.

BY MR. BOGLE:

Q. Okay. You got any outlines that you're relying on from a seminar?

MR. BARNES: That you can remember.

A. I mean, not that I can remember, but again, this is -- I didn't cite everything. To me things that are common knowledge or are consistent in the industry, I didn't feel it necessary to completely cite every statement in my report, so maybe that's an error based on an author, but I didn't feel like I needed to cite every statement I made in my report.

BY MR. BOGLE:

Q. I'm not calling you out. I just have a right to ask you --

A. Sure.

Q. -- what you're relying on to support anything that you're saying.

A. And again, I have read and reviewed a number of articles through all of my training. To me this is common knowledge that virtually any pharmacist could tell you, any physician could tell you, that the prescribing habits of opioids are changing drastically.

Q. Have you seen the rate of addiction to opioids being one factor in the changing of prescribing practices?

A. I --

MR. BARNES: Object to form. I don't --

if you know what he means by addiction.

A. And again, there's a lot of discussion between addiction versus physical dependence. What I will tell you is that everybody is concerned. Pharmacists are concerned. Doctors are concerned. They're changing their prescribing patterns because of the concern of addiction, of physical dependence, but also because of diversion and what's happening to these products once they leave the closed distribution loop and what happens to the products afterwards.

BY MR. BOGLE:

Q. As a practicing pharmacist, do you specifically have concerns about the rate of addiction with opioids as being a reason that they should be prescribed less?

MR. BARNES: Same objection.

A. And I don't -- I have not seen any evidence that talks about the quantity or the number of prescriptions related -- and how that can cause addiction. It's not necessarily quantified. Yes, what's quantified is the number of people that have died, have moved into heroin, have done other things with the illicit opioids that are on the market.

But in general, the information that I

have seen and the data that I have reviewed and seen talks about the fact that the deaths and the opioid epidemic aren't necessarily caused by prescription opioids that are taken according to prescriber direction.

BY MR. BOGLE:

Q. Do you intend to testify that opioids do not pose the risk of addiction?

A. No. The FDA, by classifying most opioids as either a III or a II, as a controlled substance III or II, have blatantly come out and said that there is a risk of abuse and addiction.

Q. Do you believe at all times that opioids have been on the market and available for public consumption, that patients should be aware that opioids pose a risk of addiction?

MR. BARNES: Objection. Way beyond the scope of her report. What time period are you talking about?

MR. BOGLE: I think I said at all times opioids have been on the market.

MR. BARNES: At all times opioids have been on the market. Do you know what time period he's referring to?

A. I don't. What I will tell you that as a pharmacist, from 1990 until present we have had an obligation to consult with patients and to speak to them about their medication and to ensure that they're knowledgeable and aware of what the products are and what risks they pose.

BY MR. BOGLE:

Q. My question was, do you believe at all times that opioids have been on the market and available for public consumption, that patients should be made aware that opioids pose a risk of addiction?

MS. FUMERTON: Object to form.

MR. BARNES: Yeah, same objection to form. Also, it sounds like you're asking for a legal analysis.

MR. BOGLE: I'm not.

BY MR. BOGLE:

Q. Go ahead.

A. Well, and I can speak to as long as I've been in practice, and the fact that the FDA has come out and said that these are controlled substances and by the nature of them being controlled substances they have potential for abuse is the information that is readily available to anybody.

Q. So do you intend to testify that the average patient just by way of the fact that it's a controlled substance should know that it's addictive?

MR. BARNES: Object to form. Vague. I don't know what you mean by average, but --

A. And I don't know if they should know. There is a growing -- they will know, and they're going to -- as they take it, they're going to be made aware of it.

BY MR. BOGLE:

Q. Should they know that before they become addicted to them?

MR. BARNES: Same objection.

A. Again, it's not a matter of addiction. You asked me whether or not the patient should know -- would they know that they're taking it, not necessarily are they addicted to it.

BY MR. BOGLE:

Q. No, I asked you whether they should know that it poses a risk of addiction.

MR. BARNES: Same objection. Beyond the scope of her report.

A. Again, it's not my -- I'm not here to talk about addiction and physical dependence.

BY MR. BOGLE:

Q. If you go to Page 21 of your report. On Paragraph 53, you say Giant Eagle Pharmacy experienced rapid growth beginning in 2008 and peaking in 2012 after new store growth slowed.

Do you see that?

A. Yes.

Q. What prompted the rapid growth beginning in 2008 for Giant Eagle?

A. It was -- they were building new stores.

Q. What -- or if you know, what prompted the need for these new stores?

A. Well, it's just growth of the general business, so they're growing their business, they're growing the company in total. So when you build a new store typically there's a pharmacy that's going to be located within that particular store. So as they had growth. There was also an extreme amount of growth in overall prescriptions within the entire industry during that time period.

Q. But companies grow for a reason, and I'm asking you do you know why Giant Eagle Pharmacies grew beginning in 2008? I understand that they did grow. I got that from your report. I'm asking you why. Do you

know why?

MR. BARNES: Asked and answered.

A. Because they had more customers coming to them.

BY MR. BOGLE:

Q. Do you know if the growth was specific to any drug or class of drugs?

A. I know that they grew more rapidly in their non-controlled substances than they did in their controlled substances.

Q. Based on what? What did you look at to determine that?

A. When we looked at the data, and I actually have some reports that speak to that.

Q. Specific to Summit and Cuyahoga County?

A. Specific to Summit and Cuyahoga County.

Q. Can you point me to which ones show the growth -- the disproportionate growth for Summit and Cuyahoga County, non-controlled versus controlled?

A. Well, you can look at over those years. So for example -- where's the spot? So just as an example, if you look at Exhibit M.

Q. Okay.

[redacted]

[redacted]

Q. Did you run any assessment like this for opioids specifically?

A. I did not for opioids specifically. This is strictly on controlled substances.

Q. Any other exhibits that you intend to rely on here for the point specific to Summit and Cuyahoga County -- there was disproportionate growth of controls versus non-controls?

A. Well, I mean, there's -- I've got another -- there's another exhibit here on Barberton, and when you look at, say, Exhibit Q, and you can see Barberton in general, you can see growth in their total prescriptions, whereas their non -- or their controlled prescriptions actually are flat to declining.

Q. Okay. Any others?

A. I mean, there are other conclusions that I can draw based on these exhibits, but that's how I

rely -- that's how I got to that conclusion. Those are two examples.

Q. Have you done any specific assessment for any Summit or Cuyahoga County pharmacies as to the rate of growth of non-controlled substances versus the rate of growth for opioid sales?

A. If you look at Exhibit -- I think it's I.

MR. BARNES: I have it in color if you want.

A. Oh, that wasn't the one I was thinking of. I was thinking of the ones that are specific to the opioids and the at-issue drugs.

So specifically, yeah, if you look at Exhibit J, this is a specific comparison of all of the opioids -- the three opioids that appear in Giant Eagle's top 100 drugs as determined by IMS, and you can see -- now, this is a market share comparison, but you can see their comparison, that they under-index -- when you look at their non-controlled substances they actually under-index in these at-issue substances.

BY MR. BOGLE:

Q. And this is looking at Giant Eagle stores across the board, right, not for any specific county or city or geographic region?

A. That is correct. This is much -- this is broader, yes.

Q. And the top 100 prescription drugs listed here -- who came up with that list?

A. IMS.

Q. Where'd you get the IMS data?

A. This particular data came as part of the discovery. It just came up as part of the discovery. IMS data what I'm used to using for evaluation of market share, so this is the drug data -- or not the drug. This is the database that I'm used to using and so this is the information that was brought up as part of discovery.

Q. So under Note 2 here in Exhibit J you list four specific opioid products that were assessed; right?

A. It's three.

Q. Yeah, I'm sorry. I'm sorry, no, it's -- okay. Am I reading this wrong? You say HYCD/APAP. That's one?

A. One.

Q. Oxycodone/APAP. That's two; right?

A. Correct.

Q. Oxycodone/HCL. That's three; right?

A. Correct.
Q. Four is APAP/CD; right?
A. Oh, you have the ol -- you don't have the amended.
Q. Oh, I do. I'm sorry. I'm looking at the wrong one.
A. That's okay.
Q. All right. Let me start that over then.
A. Okay.
Q. Thank you for telling me that.
A. You're welcome.
Q. Okay. I stand corrected. And in Note 3 you do have three drugs listed here. Why did you remove the fourth one?
A. So we debated, because one, it's not -- it is an opioid but it is not a drug that is at issue in this particular case, so we didn't want to confuse the only way -- then we would include all opioids, and then you're involving some C-IIIs, some C-IVs, so we felt it better to actually look at and limit the drugs that we analyze to the ones that are involved in this case.
Q. So you removed APAP/CD; right?
A. Correct.
Q. What does that stand for?

A. It's Tylenol with codeine.

Q. And what was the basis for saying that's not at issue here?

A. It is -- it's not a C-II product, and it's not part of the hydrocodone family that started as a C-III and was moved to a C-II.

Q. So the three drugs you looked at here that appear on the top 100 list -- do you know what numbers they appeared on the top 100?

A. I don't recall. I'd have -- you'd have to look at the reliance materials.

Q. I didn't see that they were numerically broken out. I see them listed here and but I don't see them numerically broken out as to where they fit on the top 100.

A. Right. They would be in the sources. They would have them in the sources if you look at the reliance materials and the sources themselves.

Q. So you're saying in the materials you produced I can glean what numbers these -- meaning was HYCD/APAP Number 2 on the list?

A. That is correct.

Q. I can determine that?

A. Off the Excel spreadsheet, yeah.

Q. Let's go back to Page 24 of your report. In Number 63, Paragraph 63, you talk about various types of training that was conducted; right?

A. Yes.

Q. Did you review any specific training materials that were provided to HBC employees?

A. I did not.

Q. Did you assess what percentage of employees actually received training related to controlled substance diversion at HBC?

A. I did not.

Q. On Page 25 of your report -- I'll get there.

A. Can I ask that we go maybe 10, 15 more minutes? I'm going to need a break.

MR. BARNES: Okay. It's 12:53.

MR. KOBRIN: Should we break for lunch?

MR. BARNES: Yeah, let's see what --

A. Before you start that question, I'm just letting you know.

MR. BOGLE: Yeah, I understand. If you want to break for lunch that's your prerogative. That's your --

MR. BARNES: Yeah, we've gone over an

hour -- well, almost an hour. How about we break around 1:00?

MR. BOGLE: That's fine. Whatever you all want to do.

BY MR. BOGLE:

Q. Okay, so I think I was at Page 25.

A. Yes.

Q. You make a reference in Paragraph 67. The first sentence actually says like most pharmacies with self-distribution capabilities, the drug warehouse and its distribution capabilities are a strategic asset and advantage for the organization that improves, visibility, tracking, and overall management of drug inventory. Do you see that?

A. Yes.

Q. What do you mean by improves visibility?

A. The organization, because they are purchasing product, they can see the product as it enters the warehouse, as it flows through the supply chain, and as it resides on the pharmacy shelf.

Q. And from a visibility perspective, wouldn't it also be true that they can see, for example, which doctors are writing the prescriptions that are being filled?

A. Oh.

MS. FUMERTON: Objection to form.

A. It's -- so I don't know whether or not Giant Eagle has that capability or not.

BY MR. BOGLE:

Q. Is that something -- it's not something you looked at?

A. By doctor? No.

Q. Right. Do you know whether that's something that HBC ever assessed as part of its suspicious order monitoring program -- an assessment of, for example, what percentages of prescriptions came from specific doctors?

A. I don't know that HBC specifically would have seen those things, no. It may have been reports or part of investigations that were conducted through the stores, the PDLs, and the home office.

Q. Did you see any sort of investigations or reports like that, though, at any level?

A. There was -- there were some testimony and some exhibits to the fact that they did look at certain prescribers, yes.

Q. Was there any sort of specified report that was run at any regular interval along those lines?

A. Based on prescribers and based on the testimony that I read I don't know that there was any concentration itself on regular reports based on prescribers.

MR. BARNES: If this is a good break point -- you seem to be pausing -- we don't need to wait two more minutes to 1:00, but --

MR. BOGLE: That's fine. I don't care. That's fine.

THE VIDEOGRAPHER: Okay. We are going off the record at 12:56 PM.

[A recess was taken.]

THE VIDEOGRAPHER: We are back on the record at 2:01 PM.

BY MR. BOGLE:

Q. Okay. I want to go back to something I unfortunately skipped over when I was going through this. If we could go back to your amended report, and specifically want to look at the materials considered list, which is Exhibit C. And I want to go to the last page of that list.

On that page you've got a list of 16 internal production documents. Do you see that?

A. Yes.

Q. Did you specifically select those documents?

A. Yes, I believe so.

Q. How did you select them?

A. I used them in -- I mean, by reading the testimony and going through the depositions. I used that -- I found them that way.

Q. So you pulled these documents from deposition exhibits?

A. Yes.

Q. All 16 of them?

A. I believe so.

Q. Is there a reason why you only pulled these 16 exhibits from the depositions and not other exhibits?

A. What other exhibits?

Q. Is it your understanding that there are only 16 exhibits used in all the depositions you reviewed?

A. Oh, no. I just used those because those were the ones that I used to help form my opinions.

Q. So these are the 16 documents from the depositions that you've relied on to form your opinions? Am I understanding you right?

A. Well, I used all of them -- I used all the testimony, all the documents. They all helped me form my opinion. But these are the ones that I used for a specific purpose.

Q. What purpose was that?

A. To further document my citations.

Q. Okay. I guess I'm just still a little confused as to why these 16 were selected above the other deposition exhibits. Can you help explain that for me?

A. Just what I felt needed to be highlighted because I used them specifically in my report.

Q. So would it be fair to say you viewed these as the 16 most important documents -- internal documents to your opinions?

A. No, they're just the ones that I happened to use that I felt like I needed to highlight so I could cite and document.

Q. So you're saying all of these are actual cited in the report itself?

A. I don't know if all of them are. I mean, it was just a way for -- right or wrong, it was a way for me as I wrote my report, those were the ones that I felt like I needed to include.

MR. BARNES: Do you want to show her any of these document to refresh her memory?

MR. BOGLE: I'm just asking. I don't think --

A. And I'm trying to give you a good answer.

BY MR. BOGLE:

Q. Okay. Were any documents -- internal documents provided to you by counsel that were not specifically requested by you?

A. I mean, they gave me -- I didn't request -- I guess I don't understand your question. I didn't really -- they provided me documents, yes, and -- but -- and these documents were contained in those documents. I don't understand your question.

Q. In the documents that were provided to you by counsel?

A. Yes.

Q. Let's go back to Page 27 of your report. You say in Paragraph 74 the volume of HCPs distributed by HBC/GERx generally track below quotas set by the DEA, and you say see Exhibit G; right?

A. Yes.

Q. Then you say the data shows that distribution of hydrocodone combination products from

HBC was below the expected amount on an MME basis between 2012 and 2017 when indexed to the DEA quota for hydrocodone products starting in 2010.

Do you see that?

A. Yes.

Q. What was the process you used here to determine the expected amount of HCPs that HBC should be distributing over this time frame?

A. Well, the report doesn't have anything to do with an expected amount. It is strictly a comparison between the DEA quotas and what was actually shipped.

Q. Well, you say this was below the expected amount on an MME basis. Do you see that?

A. I understand. So to clarify my answer, the idea in this particular exhibit is to show that the DEA -- even though the DEA was increasing quotas, an expectation would be for HBC to also increase their shipments.

The DEA is increasing the quotas in response to an increase in prescriptions in the marketplace, so an expected outcome would be for HBC then in turn to have an increase in shipments of HCPs to coincide with the quota, but in reality what we

actually found was that HBC had a reduction in the HCP shipments.

Q. Would you expect there to be an increase in all Giant Eagle Pharmacies based on increases in DEA quotas?

A. It's really looking at an average overall, that if the DEA nationwide is -- if the DEA nationwide is raising their quotas as a result of an increase in prescriptions and an increase in demand for the product, that a reasonable expectation is that in general every pharmacy could also have that same type of increase.

So it's very much a generalization when you talk about what could be expected. In general you would expect if the DEA says there's a higher demand for product and there's more prescriptions, then in general the pharmacies are going to rise at that same rate, which is why the DEA increased their quota to begin with, but what we actually found with Giant Eagle is that the amount of HCP shipments declined.

Q. The DEA quotas are done on a nationwide basis; right?

A. That is correct.

Q. So you've compared the nationwide

increases to the HCP distribution just in Cuyahoga and Summit Counties; right?

A. Correct. But the distribution in those -- the number of prescriptions involved in Cuyahoga and Summit Counties is included in the DEA's quotas.

Q. Well, so is every other county in the country; right?

A. Sure.

Q. And so what basis do you have to say that the Summit and Cuyahoga County prescriptions necessarily should increase at the same level as a national quota?

A. I didn't. I made a generalization that said one could expect that nationwide if the DEA says look, we're increasing the quota overall nationwide because in general the amount of prescriptions is increasing and it's increasing overall nationwide -- so if you were at parity -- if you're a pharmacy and you're at parity, you would expect then that if the DEA is saying that nationwide the number of prescriptions is going up, that you as a pharmacy chain would also have your prescriptions go up as well, but what we actually found when we looked at the data is that Giant Eagle's prescriptions went down be -- and therefore the

shipments out of HBC went down as well.

Q. Why was this indexed to MME?

A. That's the way the data was -- because that's how the FDA does it. They do it based off of an MME basis because it's done through API or active pharmaceutical ingredient.

Q. Is this one of the exhibits, Exhibit G, that AGI created?

A. They designed this particular chart, yes, on my direction.

Q. Do you understand that DEA quotas are meant to indicate how much should actually be distributed of a specific product?

A. DEA quotas are actually for manufacturers. They're not meant for distributors; they're meant for manufacturers. But DEA quotas, the rise of quotas, is in response to an increase in the demand for these particular products. And the amount of API that the DEA allows to be distributed to manufacturers or given to manufacturers for their manufacturing capabilities is in response to the demand by patients.

Q. But DEA quotas are not specific to any specific distributor as far as how much the DEA saying distributor HBC, this is how much we think you should

be able to legitimately distribute as far as a specific product; right?

A. That is correct. The DEA determines how much API should be given to the manufacturers and to research facilities.

Q. And further down on Page 27, Paragraph 76, the second sentence you say the ratio of controlled substance prescriptions to total prescriptions dispensed for all Giant Eagle Pharmacies in Summit and Cuyahoga Counties during the relevant time period was less than 10 percent, and then you cite to Exhibit H.

You see that?

A. Yes.

Q. Do you have the complete list of controlled substances that went into this calculation?

A. It is in the Excel spreadsheet. Let me think. I believe that particular spreadsheet -- I'd have to go back and look, but I believe Giant Eagle actually named the controlled substances -- not named, but indicated which were controls and non-controls.

Q. In the source data you provided?

A. In the source data.

Q. Did you crosscheck the controlled substance list from the source data against any list

you might have?

A. No, I did not.

Q. On Page 28 of your report -- I'm looking at the last sentence on Paragraph 79. You say during the relevant time period, the share of prescriptions for controlled substances dispensed by Giant Eagle Pharmacies declined steadily, indicating that the pharmacies were exercising effective controls to prevent diversion of prescription opioids.

Do you see that?

A. Yes.

Q. What's the relevant time period you're talking about here?

A. From 2009 through 2018.

Q. Did you run any specific assessment for opioids along these lines?

A. So the -- what do you -- for all opioids, or the at-issue? I mean, you can see from the exhibits which analyses were done and which drugs were contained.

Q. Yeah, I'm asking for 2009 to 2018, did you look at -- did you assess whether the opioid dispensation by Giant Eagle Pharmacies declined steadily?

A. And I'd have to recall. I think most of it was done -- other than that one report that I did with at-issue drugs, most of the other ones are based off of controls in general, or specific only to hydrocodone.

Q. So over this time frame of 2009 to 2018, do you know whether HCP sales at Giant Eagle Pharmacies steadily declined?

A. Can you ask that question again?

Q. Sure. Over the time frame you've listed here, 2009 to 2018, do you know whether HCP sales at Giant Eagle Pharmacies steadily declined?

A. I don't think I know specific to HCP, no. For the -- give me just a second.

No, not specific to HCP.

Q. What are you relying on specifically to conclude that the decline of controlled substances sales over this time period or dispensation over this time period necessarily means effective controls against diversion for being exercised?

A. Well, because the pharmacies were growing, they were not filling -- as the growth of the pharmacy occurred or as the total prescriptions occurred, the amount of controlled substances were going down,

therefore indicating a couple of different things.

One is that they weren't just inadvertently filling controlled substances. Their controls were in place; they were following their controlled substance manual, so they were only filling prescriptions by legitimate prescribers. They weren't targeting or being attracted by drug-seekers because that type of patient wasn't the kind of patient that was seeking Giant Eagle or using Giant Eagle to fill their prescriptions.

Q. Which you're basing those conclusions just based on the fact that the numbers went down; right? Is there any other data you're considering to reach that conclusion?

A. Well, I mean, all of the review. When you think of all of the testimony that has been given in this case, when you think about the controls, my review of that testimony in comparison to my experience and the industry standards as I know them, continuing education and other industry-type meetings -- I mean, it's a whole wealth of information that I take into account when I draw these conclusions.

Q. But a decline in controlled substances sales by itself does not necessarily mean that

effective controls against diversion are being exercised, does it?

A. It means that some of them are, yes, because they're not -- one, you don't have the drug-seekers. It will go through -- if people know that you're willy-nilly filling prescriptions and you're not scrutinizing prescriptions, that information will get out and people will come pouring in.

Q. So you're saying -- but -- so you're saying that you can look just at the decline in controlled substance sales and necessarily conclude that effective controls against diversions related specifically to opioids exist?

A. Yes, I can make that conclusion.

Q. And you're basing that on the fact that you think that drug seekers would know if it was easy to get opioids from these pharmacies and the numbers would go up?

MR. BARNES: Objection. That misstates her former testimony.

A. And like I've said before, it's a combination of products. The reason -- or a combination of information. The reason that it's going down is because they are following effective controls

and therefore the amount of prescriptions are not going up.

BY MR. BOGLE:

Q. So in your mind, is it inconceivable for there to be any reason why controlled substances sales would go down in a situation where effective controls do not exist?

A. I don't understand your question.

Q. Can you conceive of any situation where controlled substances sales would go down in a situation where effective controls do not exist?

MR. BARNES: Objection. Calls for speculation.

A. Yeah, I mean, I could dream something up, but I'm not here to -- I mean, that's not something I'm here to think about. I didn't actually think about it.

BY MR. BOGLE:

Q. And you also did not look at whether the opioid prescriptions actually declined during this time period either; right?

A. I did not specifically look at opioids, no, in totality.

Q. Or HCP specifically; right?

A. Correct.

Q. We can go to Page 34 of your report.

A. I'm sorry. 34?

Q. 34. Yes, ma'am.

You say -- it's a carryover paragraph, Paragraph 96. You say however, a pharmacist may at any time exercise their professional judgment and refuse to fill a prescription that appears fraudulent, outside the scope of practice, or not in accordance with standard treatment guidelines.

Do you see that?

A. Yes.

Q. Did you assess in this case whether any Giant Eagle pharmacist refused to fill any opioid prescriptions in Summit or Cuyahoga County?

A. I did read about that in the depositions, yes.

Q. Which deposition?

A. I'm not going to -- I can't recall whose deposition it was, but I know it was -- there were a couple of them, and I can't recall the gentleman's name.

Q. So outside of reading depositions, did you do any analysis of your own on this issue?

A. Well, my analysis overall is I know that

it happens. It's happened -- I mean, I'm a practicing pharmacist of over 25 years, so I know that it occurs; I know that it happens. I didn't necessarily need to do an analysis. It's part of the daily responsibilities of a pharmacist to scrutinize every controlled substance prescription, and they're given the authority then to refuse to fill it if need be.

Q. No, I understand that. I'm just asking whether you specifically analyzed whether any Giant Eagle pharmacies in Summit or Cuyahoga refused to fill opioid prescriptions.

A. My analysis came from the materials that I read.

Q. The depositions?

A. The depositions that said that they had the authority to do so and in fact exercised that judgment.

Q. Are you aware of any specific numbers as to how many times that occurred from 2009 to 2018?

A. No, I am not. I believe the statement on the record says frequently or many or it happens.

Q. If we can go to Page 42 of your report.

[Discussion off the record.]

MR. BARNES: What paragraph are you going

to?

MR. BOGLE: 123.

BY MR. BOGLE:

Q. If you look on Paragraph 123, the third sentence says Giant Eagle is highly focused on preventing theft and diversion by in many cases exceeding expectations related to federal and state guidelines.

Do you see that?

A. Yes.

Q. When it comes to suspicious order monitoring for controlled substances, would this go back to your testimony earlier about you relying on inventory counts and security controls to support this statement?

MR. BARNES: Objection. Misstates her prior testimony, but --

A. So I'm confused by your question. Can you --

BY MR. BOGLE:

Q. Sure. I'll reask -- I'll ask it a different way.

A. Okay.

Q. What are you specifically from a document

perspective relying on to say that Giant Eagle is highly focused on preventing theft and diversion by in many cases exceeding expectations related to federal and state guidelines? What documents are you going to rely on for that?

A. So the -- I'm relying on, gosh, all of the documents that I've read. And I mean, there's a number of documents where they are talking about the different things that they did to exceed expectations. Just like I have prior talked about with the inventory counts, with the security controls. I mean, there are a number of different areas where that occurred specific to Giant Eagle.

Q. Okay. So what else? You've talked about inventory counts and security controls. I mean, this is pretty central to the case. I'd like to know what else you're going to come in and say.

A. Well, all of their controls. Some of them are in accordance with state guidelines and some of them exceed those state guidelines.

Q. What controls specific to preventing diversion of controlled substances are you referring to?

A. All of them.

Q. You say all of them. What -- can you give me some sort of explanation of what that means?

A. Well, all of Giant Eagle's controls when it comes to -- I mean, they write a controlled substance manual for the pharmacist. That was not required by state law. There are a number of different things that Giant Eagle did both at the store level within their warehouses using automation for picking of their products within the warehouse. Exercising the different security controls with guards and breaks and counts.

I mean, there's a number of different things. As I sit here today I can't give you an exhaustive list.

Q. The CSA manual that you referenced -- when was that first created?

A. Oh, I don't remember. The -- you mean the controlled substance manual that Giant Eagle authored?

Q. Yeah.

A. At this time I can't recall.

Q. The automation you mentioned -- is that at the distribution center level? Is that what you're talking about?

A. Yes.

Q. When did that begin -- automation for their drugs?

A. I don't have their dates. I don't have the dates memorized.

Q. Let's go to Page 44 of your report. You've got some bullet points on this page referring to physical security controls. Do you see those?

A. I do.

MR. BARNES: Those begin on Page 43, by the way.

MR. BOGLE: Okay.

MR. BARNES: Just -- he's looking at a one-page --

BY MR. BOGLE:

Q. You see there the next-to-last bullet point says order specialists to monitor store orders for accuracy and appropriateness and any deviations from typical ordering patterns?

Do you see that?

A. I do.

Q. When did that process go into effect?

A. I'm not sure. I don't know that the dates were specified in the deposition.

Q. Are you aware of what procedure that these

order specialists would follow to determine if orders were accurate and appropriate?

A. So order specialists are -- they refer to a number of different people. Again, this information came from this deposition, from Mr. Durr's deposition, who is keenly aware of the different controls, policies, and procedures that they have in place at the distribution center.

Q. Okay. I'm just asking if you know. I'm asking if you know what procedure was followed by the order specialists?

A. Well, the order specialists are -- I believe -- at some point in time he refers to them as pickers, so these order specialists are limited. There's only a few of them, and they are aware of the general picking practices for each and every store, that they would readily recognize and be able to see if a store was requesting a quantity outside what was normal for their particular stores.

Q. Are you aware of any specific written procedure these order specialists follow to do their job?

A. I'm not aware of anything written, no.

Q. Are you aware of any specific training

these people would have undertaken to do their job?

A. Well, I mean, their training and their -- would be documented in their job descriptions. So when you look at their job descriptions, when you look -- that will include the different training, the different education, how they were taught to do their job, is specific to what they are doing and the things that -- and how it plays into the prevention of theft and diversion.

Q. Did you look at any of the job descriptions for order specialists?

A. No, I didn't need to, because I understand what that role is and essentially what they do.

Q. Do you have a sense then as to what specific training they received?

A. Well, they've -- they're part of the job that allows them to be a picker, and as they pick with time they understand what the patterns and the frequency and the quantities are for standard orders for standard stores.

Q. Do you know what a new picker -- what they would be trained on before they would start doing their job?

A. They would be trained according to Giant

Eagle's -- whatever their training protocol is.

Q. And what is that? Have you seen that?

A. I have not specifically seen their training protocol, no.

Q. You reference Giant Eagle's controlled substance dispensing guidelines. Do you recall discussing that in your report?

A. Yes.

Q. When did those first go into use?

A. I don't know. I can't recall.

Q. Do you know who they were distributed to -- what class of employees?

A. I believe it was distributed to the stores.

Q. To the pharmacies?

A. I believe so.

Q. Have you reviewed those guidelines?

A. I have not reviewed the guidelines, no, but based on my experience and based on the information that I have read, it's a guideline that helps the pharmacists and pharmacy technicians develop red flags and to be able to detect certain prescriptions that potentially could be illegitimate.

Q. And you're basing that on what people in

depositions have said about the guidelines? Is that true?

A. It's what's said about the guidelines and what -- an assumption that I'm making of what's in those guidelines, because they're standard pharmacy practice guidelines that most pharmacists are going to follow, and Giant Eagle chose to ensure that they were more specific about the guidelines that they wanted their pharmacists and their pharmacy technicians to follow concerning controlled substances.

Q. Go to Page 46 of your report, please, on Paragraph 130. The second sentence, you say if issues are detected or questions raised the order will be suspended until management finds a resolution.

Do you see that?

A. Correct.

Q. Did you assess whether HBC suspended any opioid orders for Summit or Cuyahoga County pharmacies at any point in time?

A. For Summit and Cuyahoga?

Q. Right.

A. I know that there were some that were suspended. As far as I know they weren't in those two counties.

Q. Have you seen any written guidelines for warehouse employees to follow to determine whether they should suspend a controlled substance order?

A. There is some information in the depositions that talks about the different triggers and the different guidelines for when to suspend an order, so yes, there is information in the testimony.

Q. Have you actually read the guidelines themselves, or just the testimony talking about the guidelines?

A. I've read most of the exhibits that refer to -- as best as I can recall that refer to those guidelines throughout the years. There have been -- there's multiple exhibits in different depositions and at different periods of time.

Q. Just so I understand, you're saying if they were marked as an exhibit to a deposition in your reliance materials you would have reviewed it?

A. Yeah, for the most part I reviewed all of them, yes.

Q. And you have a specific recollection of reviewing these warehouse guidelines in one of the exhibits to the deposition?

A. I have specific recollection of reviewing

how orders -- yes, how orders would be reviewed and suspended.

Q. Do you have a recollection of how that process worked under the guidelines?

A. Well, it's based on certain triggers of -- Giant Eagle today -- the trigger that they're currently using at the warehouse is based off of an electronic system. Prior to that you would have orders that would be suspended. The order specialist may find an error based off of unusual-sized frequency or pattern in which they would hold an order until they could get a hold of somebody that would further clarify and then they would either fix the order or they would let it go through based on the information they would get after that.

Q. Have you reviewed any specific algorithm that's been used to flag suspicious orders?

A. I've reviewed several of them.

Q. For HBC specifically?

A. Well, we've looked at all of McCann's methodologies and how those have applied, and then I also have a general understanding of the thresholds that Giant Eagle uses.

Q. When did Giant Eagle start utilizing

thresholds for suspicious order monitoring?

A. I believe the date was -- I can't remember. I'd have to look it up. And what I'm referring to, just to be clear, is their electronic system of thresholds; right? That's what you asked me for? I'm sorry.

Q. I did, yeah.

A. Yeah.

Q. Was there a manual threshold system at some time before that?

A. I don't -- no, there wasn't a manual. They've had -- they have had different reports that have been running for years, and those reports have evolved in order to flag and define different thresholds. There isn't a single threshold system that can be deployed that effectively -- that can effectively identify a true suspicious order. So using a threshold-type system is -- it's one of the tools that Giant Eagle employs, and they've been using a threshold system for several years, and it has evolved as their technology has evolved.

Q. So if you go to Page 49 of your report. In Paragraph 141 you reference a monthly threshold system starting in 2013.

A. There you go.
Q. Is that what you're referring to?
A. Yeah. Told you I had to look it up.
Q. So that's what you're referring to when you talk about the automated thresholds; right?
A. These are the automated reporting.
Q. Right. So beginning in 2013, when an order was flagged using this system, would that order be blocked?
A. This one in 2013, the order itself, it was only flagged for needing further investigation. It doesn't mean that the order was actually suspicious; it just is a trigger that is flipped so that somebody can do further investigation.
Q. Right. So while that investigation was ongoing using the system -- starting with the one in 2013 that -- this monthly system that you're talking about here -- first of all, what sort of employee would be tasked to do that investigation?
A. Well, the employee -- the employee that was tasked sort of -- the information would be brought to the attention of the pharmacy district leader, which by the way I believe in most cases is also a pharmacist, and they're the ones that are the

operational supervisor for the store level.

Q. Do you know if the pharmacy district leader covering Summit and Cuyahoga Counties was a pharmacist?

A. Yes.

Q. And who was that?

A. I've read so many reports. I cannot recall his name.

Q. So while that investigation was ongoing by the pharmacy district leader, what would happen to the order using -- under the 2013 system?

A. Well, in 2013, again, it was a flag, but in 2013, that order would continue to go through. However, because Giant Eagle is a captive self-distributor, at any time if they had a concern about an order they could certainly stop it and/or quarantine the product.

Q. Did you assess whether that was actually done in any situation, where an order was flagged under the system from 2013, it went on through, and it was pulled back later, quarantined or stopped?

A. I believe there was an order or two. I may have my time frames -- but I believe there were a couple of orders. However, it was not -- it may even

have been outside these two counties, but there are -- these are some of the questions that I asked as I was looking at their controls.

Q. So are you aware of any orders under this monthly ordering threshold system in 2013 from Summit and Cuyahoga Counties that you can cite to or you intend to cite to that were held or stopped after they were flagged?

A. I don't intend to call anything out as a specific example in the 2013 time frame.

Q. In the -- you reference in Paragraph 141 the threshold system advanced to daily thresholds based on independent store dynamics, but that part you don't have a date. Do you know when that occurred?

A. I believe that was after they opened GERx because that was the advancement in technology.

Q. Do you intend to testify that the technology employed by GERx was not available in 2013?

A. It wasn't available to Giant Eagle, no.

Q. How do you know that?

A. Because it was under development.

Q. Have you assessed whether similar technological systems were already being used by other distributors in 2013?

A. No, I have not.

Q. You can go to Page 50 of your report. In Paragraph 144, a few sentences from the bottom, there's a sentence that says furthermore, such threshold-based.

A. Uh-huh.

Q. Do you see that sentence?

A. Yes.

Q. You say furthermore, such threshold-based methods are neither an effective nor a rational means to detect diversion of controlled substances for shipments between divisions of the same company.

Do you see that?

A. Yes.

Q. So do you intend to testify that the thresholds are not effective method to detect suspicious orders?

A. Yes, thre -- so threshold meth -- thresholds and establishing a threshold system is only a tool. It cannot be used in isolation to determine whether an order is suspicious or not.

Q. But once an order is flagged using a threshold, what you should go next is doing due diligence to confirm or refute whether it's actually suspicious; true?

A. Again, the threshold is a tool and how you design the tool. Every threshold system that you use has fatal flaws, and you need to understand those flaws, and by understanding those flaws based on the nature of your business you can determine then whether or not an order that is flagged needs further investigation or not.

Q. So it's your opinion then that just because an order is flagged it doesn't necessarily require further due diligence?

A. I'm not saying it doesn't require further due diligence. What I'm saying is somebody makes -- needs to then make a determination whether or not it requires further due diligence.

Q. So it needs to be looked at at the very least; right?

A. That is correct.

Q. What are the fatal flaws with HBC's threshold system that they employed in 2013?

A. Oh. Well, the threshold system that they had in 2013 -- it flagged orders. It was an average -- they used an average. They used a nation -- not nationwide, but their company average, and it was aggregated through the entire month.

So what you got is as you were reaching your threshold potentially -- as you were reaching your threshold you didn't hit those thresholds ever until the end of the month, so it was more of a look back and be able to see stores that were constantly -- or not constantly, but if they were exceeding certain thresholds, that somebody could keep an eye on them.

Q. We can go to Page 64 of your report. You say in the bullet point there starting with despite implementing -- do you see that?

A. Uh-huh.

Q. It says despite implementing a threshold system to monitor for suspicious orders there was no change in the number of suspicious orders validating that existing policies and procedures were sufficient to prevent theft and diversion.

Do you see that?

A. Yes.

Q. You agree this conclusion assumes that the threshold system that was implemented was adequate; right?

A. No, what I'm assuming what is adequate and even more than adequate are Giant Eagle's policies, procedures, and controls regarding theft and diversion,

and that the threshold system was -- it was a redundant tool that they added because that seemed to be where the industry going -- where the industry was going and what the expectations were in the industry, and all it proved is that Giant Eagle had sufficient controls to prevent theft and diversion.

Q. But in order for the threshold system to prove that, you would have to assume that it in and of itself was an adequate system; right? Otherwise it can't validate anything.

A. Right, and -- well, but based on -- but even as technology advanced and their systems became more sophisticated, nothing changed. They didn't identify even -- they didn't identify more. So yes, they may have used a rudimentary threshold system in 2013 that was the best thing available to them at the time, but even as technology advanced and they took advantage of more advanced software and more complicated algorithms, the outcome was the same, which is that no suspi -- or limited suspicious orders, very little suspicious orders were identified, and therefore you can conclude and I have concluded that their controls are sufficient.

Q. I didn't see an analysis in your report as

to the number of suspicious orders flagged over time using these different systems. Have you conducted such an analysis?

A. Based on all of the information that I have read, there haven't been any. There's been a couple and they have been outside these two counties.

Q. Have you independently verified that outside of review of the depositions?

A. I haven't needed to do that because --

Q. I'm just asking if you have.

A. I have not. I have not because I didn't feel like I needed to. There are people that -- within the organization that have validated all of this information.

Q. But you didn't undertake any assessment of that on your own outside of reviewing the transcripts; right?

A. I didn't feel like I needed to.

Q. So that's a no; right?

A. I didn't feel like I needed to.

Q. I'm just asking if you did or you didn't.

A. I didn't feel like I needed to.

MR. BARNES: Okay.

BY MR. BOGLE:

Q. But you didn't; right?

MR. BARNES: Objection. Asked and answered. Let's move on.

MR. BOGLE: She hasn't come close to answering the question and you know that.

MR. BARNES: Let's move on.

BY MR. BOGLE:

Q. You didn't do it, did you?

A. I didn't have to.

Q. You didn't feel like you had to?

A. I didn't have to.

MR. BARNES: This is five times now. Let's move on.

BY MR. BOGLE:

Q. On the last bullet point here on Page 64 you say in the second sentence the DEA believes that Giant Eagle provides effective controls and procedures by inspecting their stores and distribution center regularly and issuing licenses to operate.

You see that?

A. Yes.

Q. Do you intend to testify on behalf of the DEA as to what they specifically believe?

A. No.

Q. And you say a similar thing about the state board of pharmacy for Ohio and other state boards of pharmacy. I mean, do you intend to come and testify that you know what individuals at these regulatory bodies think?

A. What I'm testifying to is the fact that these regulatory bodies are issuing licenses to operate. Before they can issue those licenses to operate, they have rules and regulations that need to be followed that need to be proven to be followed, and these regulatory agencies, they do unannounced audits and visits and checks to continually make sure that Giant Eagle is in compliance with rules and regulations. If Giant Eagle was outside compliance or had failures in their controls, they no longer would issue these licenses.

Q. So outside of the granting of the licenses, do you intend to testify as to what any people in these regulatory bodies think or what the regulatory bodies think of them collectively?

MR. BARNES: Asked and answered, but go ahead.

A. Again, I don't work for these regulatory bodies, but the fact that they are issuing these

licenses means that they believe that effective controls would take place -- effective controls were in place or they wouldn't continue to give them licenses to operate.

BY MR. BOGLE:

Q. Are you basing that on any discussion with anybody at these regulatory bodies?

A. No.

Q. Are you basing that on anything outside of the fact that they have continued to license them?

A. I mean, when you look and you understand what the licenses mean and you understand that they audit and they check and they go through and inspect what they expect, one can draw a logical conclusion that they approve their policies, procedures, and controls.

Q. I'm just asking if you're relying on anything outside of the fact that they've continued to license them to support the opinion you're offering in this bullet point.

A. Yeah, they --

Q. It's a simple question.

A. Right, but they license and they inspect them. It's a simple answer.

Q. Have you reviewed any of the inspections?

A. I have not personally reviewed the inspections. I have reviewed the testimony of the people that have reviewed the inspections.

Q. So you've talked about licensing and inspections. Anything else you're relying on for this conclusion about these people's internal beliefs?

A. With regard to the DEA and the state board --

MR. BARNES: Object to the form of the question. Sorry.

A. With regard to the DEA and the state board? Is that -- what's your question?

BY MR. BOGLE:

Q. Uh-huh. Yeah.

A. What's your question?

Q. You mentioned inspections and licensing. Is there anything else that you intend to rely on to support the conclusion in this bullet point as to the beliefs of these state or federal regulatory bodies?

A. Just those two points, that they license and they inspect them.

Q. Thank you.

If you can go to Page 58 of your report.

You see there's a footnote there at the bottom of the page that says my review of Dr. McCann's -- of extensive reliance materials is ongoing and I may supplement my opinions as a result.

Do you see that?

A. Yes.

Q. Have you at this point completed your review of Dr. McCann's reliance materials?

A. For the particular conclusions that I have drawn, yes.

Q. Is there anything else in his reliance materials that you think you need to see to draw any additional conclusions?

A. Not at this time, no.

Q. On Page 59, Paragraph 159, the second sentence, you say although as of today I have not been able to evaluate the basis for the thresholds Dr. McCann uses in his maximum daily dosage units approach, I note that the results of this approach are absurd.

Do you see that?

A. Yes.

Q. Have you been able to evaluate the basis for those thresholds as of today?

A. No, I have not.

Q. Are you actively trying to do so?

A. Not at this time.

Q. If we go to Page 52 of your report. I'm on Paragraph 147. The third sentence you say yet another fatal flaw that spans his transactions analyses is that Dr. McCann is using unproven, nonstandard, unprincipled methodologies that are void of research and application of widely-accepted professional principles.

Do you see that?

A. Yes.

Q. Is that a sentence that you drafted or one that came initially from AGI?

A. Well, I mean, it's information that was part of our discussions. I mean, we talked about each one of these. So did they transcribe my language? Possibly, yes.

Q. And what is your basis to say that his transactions analyses are unproven, nonstandard, unprincipled methodologies? What are you relying on to support that?

A. Well, one, so he doesn't cite anything. He doesn't cite why he chose those methodologies. The methodologies aren't proven. There is no proof in the

industry. There is no industry standard. Everybody is still playing with threshold and threshold systems and how best to identify and flag.

So they're not proven. They're not standard. He doesn't describe any principals that he follows with regard to these methodologies and he doesn't point out any of his own flaws. He just says here it is.

Q. What sort of transaction analysis would you conduct to do the review that he did?

A. And as I've stated earlier, a threshold-type system has flaws. It doesn't matter which one you pick. You're going to have flaws. The --

Q. So even using a non-threshold-based analysis, how would you do it?

A. I don't --

Q. To do the kind of analysis he did as far as the number of suspicious orders?

MR. BARNES: Objection. Outside the scope of the report. She provides criticisms of Dr. McCann's approaches. She's not here to tell him how he should have done his job.

MR. BOGLE: Well, she can say that.

A. Right. So I'm not here to tell Dr. McCann how to do his report, and I'm not -- yeah, I'm not here to do that. What I can tell you is the methodologies that he chose have flaws.

BY MR. BOGLE:

Q. Okay, so my question is if you were doing this sort of analysis, what methodology would you choose?

A. But I'm not here to provide that analysis. That's beyond the scope of what I was asked to do.

Q. Do you think you're qualified to do that?

A. To come up with a methodology?

Q. Correct.

A. It's not something I would engage in, no.

Q. And if we can look at -- further down on Page 52. The last two sentences say -- on Paragraph 147. I'm sorry.

Finally, in all five of Dr. McCann's approaches, Dr. McCann flags all transactions subsequent to the first flagged transaction. This means that he automatically impugns all subsequent transactions without an analysis of the fundamental properties of the transaction -- transactions, thereby abandoning whatever modicum of professional principle

might have supported his approach.

Do you see that?

A. I do.

Q. Did this language here come from AGI?

A. Oh, no. It was mine.

Q. And then let me ask you. As far as this specific component that you're criticizing, what methodology or principles are you relying on to say that subsequent transactions should not be flagged if a suspicious order is not investigated?

A. So understanding that when a pharmacy places an order, it's for replenishment of a product, and you cannot then say that every order from that point forward should be considered suspicious, because they're placing orders based on prescriptions that have been filled, that have been filled and have gone out the door.

So to take an analysis threshold, what have you, and say just because this very first order needs to be flagged and everything after that should be flagged as well is absurd.

Q. What process would you undertake if a suspicious order was flagged but not investigated as to the subsequent orders?

MR. BARNES: Same --

BY MR. BOGLE:

Q. That same product.

MR. BARNES: Same objection as prior. Outside the scope of her report.

A. Exactly. I'm not here to determine the best way to do it. I was here and I was asked to determine whether or not Giant Eagle was in compliance.

BY MR. BOGLE:

Q. But I'm just talking about a specific component of what you're talking about in your report, and I'm asking if you -- strike that.

What process would you undertake or would you think is a reasonable process to undertake to assess whether subsequent orders are suspicious of the same product if a prior order has been flagged and not investigated?

MR. BARNES: Objection. Same objection --

BY MR. BOGLE:

Q. If you don't know, that's fine.

A. It's not that I don't know or I don't have or cannot form opinions. What I'm saying in my report is that the way Dr. McCann approached it is inappropriate.

Q. Any order that is flagged by a threshold system as suspicious should be investigated; right?

A. No.

Q. No?

A. Which we've already talked about before. Just because a threshold system may highlight an order that somebody needs to look at doesn't -- the threshold system is not saying this order is suspicious. A threshold system only flags an order for somebody to look at.

Q. How do you distinguish between looking at an order and investigating an order? I guess I'm not following the distinction.

A. Well, to me an investigation is something that is more formalized. When you look at an order and you understand the flaws of the tool that you're using and you understand the normal pattern, frequency, and order size of the store in which that order belongs to, somebody makes a decision whether or not that order can continue. The threshold system is only a tool.

Q. So if a order is flagged using a threshold system, what should a person do in looking at that order to determine whether it's suspicious or not?

A. So that particular person would look at

the -- like I said, would look at the information, just like what Giant Eagle said. They look at the information, they understand their stores -- they know their customers, they understand their stores, and they make the determination whether or not that is a false positive.

Q. Well, what specifically would you look at?

A. Just like the DEA has given guidance. You're looking at the unusual size, frequency, and pattern for that particular product for that store.

Q. But how would you make that assessment?

A. Through knowledge and experience and knowing your customer. The DEA says you have to know your customer, and Giant Eagle knows their customers better than most because they're their pharmacies. They're owned by their own company.

Q. Have you seen any written investigations done by anyone at HBC or Giant Eagle as to flagged suspicious opioid orders?

A. I recall testimony that investigations have been done, but I just -- I recall written testimony that the process has worked and investigations have been completed.

Q. But have you reviewed any of the written

investigations that have been done, if they've been done at all?

A. Well, I know that there have been investigations done because it's in the sworn testimony, and so insofar as they provided the information in the sworn testimony, that would have been what I reviewed.

Q. So did you go back behind that then and look at the actual investigation that was conducted to assess whether you thought it was an appropriate investigation?

MR. BARNES: You mean in addition to the depositions?

MR. BOGLE: Yeah.

MR. BARNES: Like the exhibits?

BY MR. BOGLE:

Q. Did you look at anything to say -- did you look at any specific investigation to say I think this is a good investigation or a bad investigation as to a specific order?

A. No, my job was to evaluate their controls, not to follow up on whether or not there was an investigation or not. I needed to look at their controls, their policies and their procedures, and to

assess whether or not they were in compliance with the Controlled Substances Act. That's what I was tasked with.

Q. Well, isn't part of the process of having controls doing investigations on orders that may be suspicious?

A. That would be part of their controls, yes, but it doesn't mean that I necessarily had to go in and look specifically at an investigation. I just had to make sure that their controls were in place and that they were in compliance.

Q. But you made that compliance determination without looking at what they actually did to investigate; right?

MR. BARNES: Objection. That misstates her testimony.

BY MR. BOGLE:

Q. If it misstates it, let me know.

A. I made the compliance -- the opinion based on their compliance, based on the stated testimony of the Giant Eagle employees.

Q. If you can go to Page 62 of your report. And I'm on Paragraph 164 where you say plaintiffs identified 30 HBC orders that they claim are

suspicious. I understand from counsel for HBC that Giant Eagle determined that none of these orders were suspicious based on a thorough investigation of the associated prescriptions. My review of these orders, including the size and frequency of other orders during the relevant periods, did not identify a suspicious pattern.

Do you see that?

A. I do.

Q. Walk me through the process that you went through here to determine that these orders were not suspicious.

A. Well, all of these orders came out of the Barberton store, so we did a full analysis of the Barberton store on my direction so that I could go in and look. So although I didn't necessarily look at these 30 orders, I did a full analysis on the Barberton store to understand their ordering, frequency, quantity, and pattern.

Q. And what did you look at in that regard?

A. The -- I looked at the orders shipped from HBC to the Barberton store, as well as the number of controlled prescriptions filled by the Barberton store.

Q. Did you run any calculations as far as

percentages, controlled versus non-controlled or opioid versus non-controlled?

A. We looked at -- I created the three exhibits specific to Barberton that would look at quantity -- oh, and the Barberton -- that stuff is in the other -- my other exhibit.

So yes, if we you look at where we specifically call -- give me just a second. So specifically from -- on Exhibit H, if you look at the time period from November 9th to May of 2018, the Barberton store -- their controlled prescriptions versus total prescriptions were 13.9 percent.

Q. And how long did it take you, by the way, to do your investigation of these 30 orders?

A. Again, I --

Q. How much time did you spend?

A. And again, like I said, I didn't personally review all of those 30 orders. I reviewed all of the shipments. So I didn't look at those 30 orders in Barberton. I reviewed all of the shipments from HBC to Barberton.

Q. How long did that process take you?

A. Well, it was a matter of crunching the data. I asked Giant Eagle for the data. They provided

the data. I had the assistance of the Analysis Group to crunch the data.

Q. That we see in Exhibit H?

A. That you see in -- well, you see in Exhibit H, but then specifically to the Barberton store you see in O, P, and Q.

Q. So beyond having the AGI folks crunch these numbers, is there anything else that you did to look at this store?

A. To get to what conclusion? My conclusion is that there's nothing --

Q. The conclusions in here?

A. Yeah, my conclusion is that there was nothing suspicious as defined by the Controlled Substances Act that happened at the Barberton store.

Q. Right. I'm asking what you specifically looked at to reach that conclusion. You've told me that AGI ran some numbers for you. I'm asking if anything else was done by you.

A. I crunched -- we just looked at the data to determine whether or not there were orders of unusual size, frequency, or pattern.

Q. Do you know how much time AGI spent creating the numbers specifically for Barberton?

A. I don't.

Q. Did you review the numbers with them to assist you in reaching your conclusions as to Barberton?

A. Well, I asked for the numbers. These are the things that I wanted to see as my -- because of my analysis on this store because it was showing up in all of -- in a lot of the depositions.

Q. Yeah, I'm just asking if you reviewed the numbers with them --

A. Yeah.

Q. -- to assist you in reaching your conclusions.

A. Yes, I did.

Q. You reference in Paragraph 165 that Barberton pharmacy is across the street from Akron's Children Hospital and within one mile of Summa Health System Barberton campus.

Do you see that?

A. I do.

Q. Did you specifically assess how many of the orders for the numbers that were crunched came from either of those two facilities?

A. Well, HBC doesn't send orders based on

prescriptions. I don't -- I guess I don't understand your question.

Q. Right, but Giant Eagle, when they fill a prescription, they know what doctor it comes from; right?

A. Yes.

Q. That's all in the prescription; right?

A. Yes.

Q. So I'm asking you did you utilize any of Giant Eagle's data to determine how many prescriptions that fall within the data that you crunched came from doctors at either of these two facilities?

A. No, I didn't -- no, I didn't.

Q. Do you have any present plans to attend trial in October in this case?

A. I guess that's up to counsel.

Q. I'm going to ask -- I'm just asking if you personally made any plans.

A. Not at this time, no.

Q. Do you know when the trial is set for?

A. No.

MR. BOGLE: Let's take five minutes. I want to look at my notes real quick. I may be done.

THE VIDEOGRAPHER: We are going off the

record at 3:10 PM.

[A brief recess was taken.]

THE VIDEOGRAPHER: We are back on the record at 3:30 PM.

MR. BOGLE: Thank you for your time. I have no further questions at this point. Okay?

EXAMINATION

BY MR. BARNES:

Q. Good afternoon, Ms. Kinsey.

You were asked a lot of questions today about various aspects of your report, various footnotes, various exhibits, et cetera, and documents and things you may have relied upon.

I just want to ask you generally with respect to the -- all of the opinions that you're providing as stated in your report, what are they generally based upon.

MR. BOGLE: Object to form.

A. So my entire report is based off of my over 25 years of experience, 30 years of experience in pharmacy, 25 practicing as a pharmacist, my years as an executive in different companies all related to health care and pharmaceuticals, continuing education, training, conferences where I meet with colleagues,

conversations with manufacturers learning and teaching me about the industry, as well as specifically for Giant Eagle the things that I read in this report. All of the testimony, testimony from former DEA agents, testimony from Giant Eagle employees. So it's an abundance of information and training, experience, and materials.

BY MR. BARNES:

Q. You were asked a lot of questions about Exhibit B to your report, which is your chronology of your litigation support engagements going back to 2016.

A. Yes.

Q. Do you recall those questions?

A. Yes.

Q. Now, have you been approved as an expert witness in multiple cases?

A. Yes, I --

MR. BOGLE: Object to form.

A. Yes, I have.

BY MR. BARNES:

Q. Have you been disapproved or excluded as an expert witness because you weren't qualified?

MR. BOGLE: Object to form.

A. No.

BY MR. BARNES:

Q. The consulting engagements that counsel discussed with you -- he was asked -- he asked questions about who you represented in that case or who you were an expert for. Do you remember those questions?

A. Yes.

Q. Did you -- have you been an expert testifying against pharmaceutical companies?

A. Yes.

Q. How many times?

A. In all of these cases. I have worked for a pharmaceutical company. I shouldn't say all, but all -- there's a couple of them that I haven't. But in the majority of my case I have testified -- I have been an expert witness for a pharmaceutical company in a case that is against another pharmaceutical company.

Q. I see.

Exhibit C to your report is a list of materials reviewed or considered. Did you intend this to be the only documents that you rely upon to form your opinions, or is it some other -- what is this listing?

A. Exhibit C is not exhaustive. Exhibit C

is -- it's a list of documents that I used to form my opinions that I cited as part of my opinions, but I reviewed much more information that is on here, not to mention the information that comes from all of my training and conferences that I have attended.

So that list is not an exhaustive list of everything that I depended upon to form my opinions. It's just a limited amount of documents that I used to cite and to draw some major points of my conclusions.

Q. With respect to the concept of theft and diversion which is touched upon in your report at multiple points, have you had industry experience and pharmacy experience -- as a pharmacist and as an executive in the industry have you dealt with theft and diversion throughout all of that experience?

MR. BOGLE: Object to form.

A. Yes, I have dealt with theft and diversion since pharmacy school.

BY MR. BARNES:

Q. And do you feel that your education, training, and experience is sufficient for the opinions that you have advanced in this case?

MR. BOGLE: Object to form.

A. Absolutely.

BY MR. BARNES:

Q. And does that include your conclusions in this case that Giant Eagle and its warehouse HBC and GERx complied with the Controlled Substances Act, including the security requirement which requires effective controls against theft and diversion?

A. That is correct.

Q. You at one point in questioning by counsel -- you've testified several times about AGI's role in this case, and I just want the record to be clear. The opinions that you're advancing -- are they your opinions or are they opinions suggested by AGI in any way?

MR. BOGLE: Object to form.

A. I wrote the report. This is my report. They're my opinions. I wrote the report. AGI was only there to crunch the data at my direction to make sure that I could further substantiate and illustrate some of my opinions and to provide actual numbers to the opinions that I was drawing.

BY MR. BARNES:

Q. You at one point indicated that AGI provided the substantiation for your opinions. What did you mean by that?

A. Well, they did the data-crunching for me so that I could be more specific in giving my opinion so that I had numbers that could back up the general opinions that I was drawing and concluding from my analysis of Giant Eagle's operations.

Q. Did you feel -- sitting here today, do you feel like you were not given any information or documents or testimony that you needed to form your opinions?

MR. BOGLE: Object to form.

A. I was given plenty of information that educated me about the case that helped me derive my opinions, so I believe I was given everything that I needed, and there wasn't anything that I needed to see further.

BY MR. BARNES:

Q. You were asked a lot of questions about your compensation. You remember that?

A. I do.

Q. Do you derive some of your compensation from working actively as a pharmacist?

A. I do.

Q. Do you derive other compensation outside of consulting -- or legal -- from consulting

engagements that are listed in your report or otherwise?

A. I do.

Q. There was some testimony about this ratio, I'll call it, of controlled substances versus non-controlled substances. Do you recall that testimony?

A. Yes.

Q. And in fact, your report contained some exhibits that you went through that analyzed HBC's -- I'll call it the controlled substance ratio. What is the significance of that ratio, and is it something that you came up with?

MR. BOGLE: Object to form.

A. So there has been DEA testimony in this case that the DEA has come out and said that a normal or an average ratio for controlled prescriptions to non -- to total prescriptions is about an 80-20 mix, so about 20 percent would be considered average or normal.

So I wanted to make sure that where Giant Eagle was in that particular ratio, where the DEA agent talks about whether or not there's a red flag, and what I found is that Giant Eagle is well below where the DEA would place any flag as far as the number of controlled

prescriptions being dispensed by the organization.
BY MR. BARNES:
Q. And is that why you asked AGI to help you crunch data, to make that analysis?
MR. BOGLE: Object to form.
A. That is correct, because I wanted to see the information and in fact see it by store within some in Cuyahoga County.
BY MR. BARNES:
Q. And using the DEA's own 80-20 test, you said that HBC never approached the 20 percent amount that the DEA said you should look at?
MR. BOGLE: Object to form.
A. That is correct. Based on the exhibit -- I would have to go back, but I believe it's about 9.8 percent. So as an organization, where the DEA said they wouldn't even consider a red flag until it was around -- until it was over 20-ish percent, Giant Eagle is well below that.
BY MR. BARNES:
Q. For the time period at issue?
A. For the time period at issue from November 2009 to 2018 in the Summit and Cuyahoga Counties.
Q. What exhibit are you looking at?

A. I'm sorry. I'm looking at Exhibit H.

Q. You found it faster than I did. And these are for so -- specific stores, all of the stores in Summit and Cuyahoga Counties?

A. That is correct.

Q. From November of 2009 to May of 2018?

A. That is correct.

Q. And is that time period related to when HBC and/or GERx distributed controlled substances?

A. Yes.

Q. And overall it's about less than half of what the DEA said would be a problematic ratio?

MR. BOGLE: Object to form.

A. Yes.

BY MR. BARNES:

Q. There were a few exhibits in your report that were not gone over, and I would like to draw your attention, for example, to Exhibit D as in dog. What -- can you tell us what that exhibit shows?

[redacted]

[redacted]

Q. Why did you want to know that?

A. Because it's tiny. It's minuscule. So when you think of the entire market that is involved in Summit and Cuyahoga Counties, the amount of MMEs that HBC is responsible for is minuscule.

Q. Is that also shown in Exhibit E? The other way.

A. Yes. Then when you break it out, both Exhibit E and Exhibit F, you can see the same thing. It's broken out per capita and broken out into the individual counties, so you can actually see the flow of shipments -- you can actually see the market share per capita in E and F, and then down in the lower right-hand corner you can see the minuscule amount that is actually distributed by HBC and GERx, including the time frame from 2014 to 2016 where they distributed zero.

Q. And why was that? Why did they distribute zero in that time frame?

A. Because they closed the HBC facility and then opened GERx, and so it was during that time frame that you're not going to see any shipments based from Giant Eagle organization.

Q. Thank you. You were asked some questions about the DEA, and there was something in your report about their overly ambiguous guidance. Do you recall that testimony?

A. It was -- yes, I do. With regards to the Controlled Substances Act and the direction that they were given or lack of specifics that they were providing as it relates to the suspicious order monitoring system.

Q. As part of your testimony and your report -- is it based upon your experience in that time frame -- and by time frame I'm talking about roughly 2000 to 2009. Were you practicing in the industry or practicing as a pharmacist during that period of time?

A. Yes, I was.

Q. And were you familiar with industry's attempts to get guidance from the DEA?

MR. BOGLE: Object to form.

A. That is correct, yes.

BY MR. BARNES:

Q. And are you familiar with whether or not the DEA would provide such guidance?

MR. BOGLE: Object to form.

A. The DEA would talk around the subject but would never necessarily put in specifics. They would never endorse a specific system or a specific methodology.

BY MR. BARNES:

Q. And so was industry required to just come up with whatever they thought was appropriate?

MR. BOGLE: Object to form.

A. Industry was directed to design and develop a system that is unique and specific to their business, so something that Giant Eagle would develop should look and would look completely different than something that CVS would develop because they're different organizations, they're a captive self-distributor. They have different businesses, different areas of operation.

And so the DEA being overly ambiguous required these organizations to cater and to uniquely design something specific for their business.

BY MR. BARNES:

Q. In that same testimony you were asked if

companies were in a better position to determine what systems they were going to use. Do you recall that testimony?

A. I do. The most important thing here -- because the other thing the DEA came out and said is -- they actually termed something called know your customer. In fact, there are experts that talk about knowing your customers being extremely important in your suspicious order monitoring program, and the unique advantage that Giant Eagle has is they know their customer because their customer is their own organization.

Their stores are following all of Giant Eagle's controls. They are Giant Eagle's employees. So having this captive self-distribution and this closed loop of supply chain makes them unique in being able to design a program that is specific to their business.

Q. But in terms of who's in a better position to design systems -- are you familiar with the ARCOS database?

A. I am familiar with ARCOS.

Q. And who maintains and manages that database?

A. Well, the DEA does.

Q. And what are the inputs into that database, based upon your experience?

A. Well, the DEA gets to see the -- the interesting part is Giant Eagle can see the flow of merchandise that is specific to Giant Eagle. The DEA can see the flow of merchandise nationwide that every -- so the only thing Giant Eagle can see is what is within Giant Eagle's control.

The DEA can see everything. So through the ARCOS database they get to see every shipment to through wholesaler from every manufacturer. It's a huge database that the DEA can look and examine and see what is actually going on nationwide, or it can be completely narrowed down to a specific pharmacy.

Q. So in terms of access to data to analyze what's going on in the country regarding controlled substances as between the DEA and manufacturers or distributors or pharmacies, who has the better information?

MR. BOGLE: Object to form.

A. Well, the DEA's information is more comprehensive. They have entirely more information and it is extremely more comprehensive for them to be in a

better position to see the actual flow if they want to see what's happening nationwide.

BY MR. BARNES:

Q. And would that include specific product flow, or say opioid flows to specific pharmacies anywhere in the country?

A. Yes.

Q. And who was responsible for enforcing the Controlled Substances Act?

MR. BOGLE: Object to form.

BY MR. BARNES:

Q. And who has the enforcement powers of arrest and criminal investigations and civil enforcement, things of that nature?

MR. BOGLE: I'll just object as it exceeds the scope of the report and my exam.

A. The DEA.

BY MR. BARNES:

Q. There were some questioning concerning -- I think the number was 99 percent of the prescriptions written in the country being legitimate, if I -- I was writing as fast as I could while you were testifying.

Do you recall that testimony?

A. I do.

Q. Is that something that you made up, or is that coming from somebody with knowledge?

MR. BOGLE: Object to form.

A. It actually came from multiple people I believe I cited in two different places, and the number that's been thrown around or has been testified to is between 99.9 percent and 99.5 percent.

I believe I pulled it out of Prevoznik's report, but it was said by multiple people, and it indicates -- and what the conclusion that is being drawn from the documents is that there's a very, very small fraction of prescribers and prescriptions that are being written for illegitimate reasons.

BY MR. BARNES:

Q. I'm going to show you what was marked as Rannazzisi Exhibit 8.

A. Does this have to be marked?

Q. I want to direct your attention to Page 76 and specifically down near the bottom, the last piece of testimony of Mr. Rannazzisi, who I believe was the head of the DEA diversion division when he gave this testimony in 2014. If he it wasn't actively at the time, he had very recently been.

Do you recognize him, for example, as the

author of the dear registrant letters from 2007 -- 2006 and 2007?

A. I do yes.

MR. BOGLE: Object to form.

BY MR. BARNES:

Q. Would you read into the record Mr. Rannazzisi's two sentences here in his Congressional testimony on April 29th of 2014?

A. Mr. Rannazzisi says, quote, I think that if you were talking about 99.5 percent of the prescribers, no, they are not overprescribing, but our focus is in rogue pain clinics and rogue doctors who are overprescribing. Actually, they are prescribing illegally. They are not overprescribing. They are illegally prescribing.

Q. So does that comport with your 25 years' experience in the industry and more particularly your experience as a pharmacist, that the vast majority, upwards of 99.5 percent of doctors, were legitimately prescribing opioids for legitimate patients with legitimate needs?

MR. BOGLE: Object to form.

A. Yes, that is correct. It is consistent with my practice as a pharmacist, as an executive, and

my 25 years in the industry.

BY MR. BARNES:

Q. There was also -- and I think you also cited to this. I want to direct your attention to the DEA witness Prevoznik, Exhibit 15. And this was used in the Prevoznik deposition on Page 32. Mr. Patterson, who was the acting administrator of the DEA, May 8th of 2018, in testimony before Congress. Would you read in the last two sentences of his testimony at the top of Page 32?

A. Mr. Patterson says, quote, I look at the vast majority of doctors. 99.99 percent are all trying to do right by their patients, so I think the key is to again keep working on it -- educational process.

Q. Again, is that consistent with your industry experience, including as a practicing pharmacist for the last two-and-a-half decades?

MR. BOGLE: Object to form.

A. Yes, it is consistent with my practice and my experience.

BY MR. BARNES:

Q. And would you expect DEA officials who have access to the ARCOS database and who have vast law enforcement powers across the entire country would know

these statistics and not be speaking of these statistics without having an adequate basis for them?

MR. BOGLE: Object to form.

A. Yes.

BY MR. BARNES:

Q. Have you ever turned down an engagement asked of you because you couldn't provide the opinion that was being requested?

A. Yes.

Q. You were asked a bunch of questions about opioids being an effective pain management drug. Do you recall that?

A. Yes.

Q. Have you actually -- and you testified generally about the FDA and NDAs and ANDAs and -- et cetera. Have you actually seen this in practice as a pharmacist?

MR. BOGLE: Object to form.

BY MR. BARNES:

Q. Opioids being an effective pain management tool for doctors?

A. Yes.

MR. BOGLE: Object to form.

BY MR. BARNES:

Q. Have you seen any trends in the availability of opioids and the effects it has on patients?

MR. BOGLE: Object to form. Exceeds the scope of my exam or her report.

A. Yes, I have seen prescribing patterns change. I've also seen what happens when certain opioids, certain strengths are no longer available in market and how those shortages affect patient care, as well as the ordering patterns of stores.

BY MR. BARNES:

Q. And how do they affect patient care?

A. Well, it --

MR. BOGLE: Object to form.

A. It sends the patient scrambling. If -- I can tell you specific -- just as a specific example earlier this year, morphine 15 milligram was unavailable, and if that was what the patient needed, your choice was either to change the drug, or unfortunately we were forced to give the patient and the doctor had to write for a stronger amount and ask the patient to cut it in half because the product was -- the product that they needed was no longer available.

So it sends the different trends, it sends the prescribing habits, and it sends the ordering process out of balance. When certain products are no longer available, then you can see some blips or disparities.

BY MR. BARNES:

Q. Is there a patient care aspect to suspicious order monitoring?

MR. BOGLE: Object to form.

A. There is. The pharmacy organization -- the pharmacy itself. Let's start there.

Pharmacists are trained to take care of their patients, and you can't take care of your patients if you don't have product on the shelf. So you have an obligation as a pharmacist to carry the products that your patient base needs, and when you can't get those products from your wholesaler, it's devastating, and you can no longer take care of your patient, and therefore you have to tell your patient to go somewhere else.

So it's important that whatever suspicious order monitoring threshold, program, and all of the different tools that you use -- the things that you put together need to follow the law, and you need to be

compliant, but you also have to remember patient care so that you don't unnecessarily slow things down or disrupt access that can cause further ramifications down the line, which includes further harm to the patient.

BY MR. BARNES:

Q. So if I'm interesting you correctly, that part of this analysis about suspicious orders is -- is your testimony that you have to take into account the legitimate needs of patients?

MR. BOGLE: Object to form.

A. Yes. You can't just stop an order because it's flagged by a system, because by stopping that order that drug is not getting to the store and therefore the store then can't fill prescriptions.

BY MR. BARNES:

Q. You know Dr. McCann -- he had like five different ways of playing with the numbers in terms of how many suspicious orders, and do you recall one of his methodologies would have identified upwards of 80 to 90 percent of every order ever input by everybody as suspicious? Does that make any sense to you whatsoever?

MR. BOGLE: Object to form.

A. No, it makes absolutely no sense. His methodologies were full of flaws.

BY MR. BARNES:

Q. Are you aware of the DEA being required to consider patient needs and making sure there was an adequate supply getting to the patients as part of their regulatory obligations?

MR. BOGLE: Object to form.

A. The DEA's regular -- and where I would apply this is in their quotas, as the DEA is determining how quotas are formed and what they should be used for. The DEA's obligation is to make sure that there is enough product in market to meet the needs and the demand of the patients.

BY MR. BARNES:

Q. You provided a lot of testimony and your report specifically addresses HBC and the GERx warehouse at Giant Eagle?

A. Yes.

Q. And you've -- I don't want to go over everything, but you've opined that Giant Eagle has met the Controlled Substances Act in many different ways and in some ways exceeded the requirements of that act?

A. Yes.

Q. And does that cover the time period in which HBC and GERx were actually distributing controlled substances?

A. Yes.

Q. And that began when; do you know?

A. In 2009.

Q. When you talked about the suspicious order monitoring, were you limiting your testimony in any way to so-called threshold systems that use formulas or algorithms?

MR. BOGLE: Object to form.

A. No, as I've stated before, threshold systems are only a tool to be used as potentially -- you don't even have to use it. It's not even required by law, but you can use a threshold-type system as a tool in your toolbox as it relates to a suspicious order monitoring program.

BY MR. BARNES:

Q. You were asked some questions about being licensed and what that means. I just want to follow up with a few questions. Were you testifying that simply having a license meant you were in compliance, or something else?

MR. BOGLE: Object to form.

A. By having a license, the regulatory authority has said that you have controls, policies, and procedures in place they find legally relevant to rules and regulations that they have created and they're enforcing.

BY MR. BARNES:

Q. And you talked a little bit about preinspection -- preinspections by the DEA. And by pre, I mean before you start distributing, another inspection right after you start distributing, and then periodic inspections throughout the time you are distributing -- is that -- am I summarizing your testimony correctly?

MR. BOGLE: Object to form.

A. Yes.

BY MR. BARNES:

Q. Now are those inspections rigorous or are they flimsy or somewhere in between?

MR. BOGLE: Object to form.

A. No, those inspections are extremely rigorous, and they give full feedback whether or not you're meeting their expectations of what needs to occur.

BY MR. BARNES:

Q. Does it include a review of suspicious order monitoring systems?

A. It does.

MR. BOGLE: Object to form.

BY MR. BARNES:

Q. Does it include a review of inventory management systems?

A. It does.

Q. Does it include a detailed review of transactions within your systems to make sure controls are in place and working?

MR. BOGLE: Object to form.

A. Yes.

BY MR. BARNES:

Q. And did you see testimony in the record for the Giant Eagle depositions that HBC and GERx were subjected to pre-inspections, post-inspections, and audits -- periodic audits?

A. Yes, I did see that testimony.

Q. And did you also see the testimony that the DEA never once suggested that Giant Eagle was not in compliance?

MR. BOGLE: Object to form.

A. The DEA did not find any deficiencies.

BY MR. BARNES:

Q. And is that an important factor for you when you made the evaluations you did in this case and came to the conclusions that you did?

A. Absolutely, yes.

Q. You were asked some questions about training -- training at Giant Eagle. Do you recall any deposition testimony about so-called CBT, computer-based training?

A. I do, yes.

Q. And do you recall specifically the Walt Durr and Greg Carlson depositions talking about training?

MR. BOGLE: Object to form.

A. Yes, they went -- they spoke of the different training modalities from computer-based training to even having trainers. Their PDLs often gave little mini training seminars or on-the-job training, so it was constant education on the policies, procedures, and controls that Giant Eagle wanted them to follow.

BY MR. BARNES:

Q. Is that pretty standard in the industry in your experience -- that type of training?

A. The training using computer-based learning, yes, and also using field management. That's pretty standard, yes.

Q. You were asked some questions about whether you particularly focused upon opioids or hydrocodone-containing products and compared them to other information. Do you remember those questionings or those questions?

A. Maybe.

Q. I could be a little bit --

A. Which one are you going to?

Q. Well, I'm just trying to see if you can generally recall analyses in the McCann report where he compared hydrocodone shipments by HBC over time. Do you recall that?

A. Yes, I do.

Q. And what do you recall he was doing with that information?

A. Well, he was comparing it -- in some cases he was comparing it to DEA quotas. In other cases he was just showing the hydrocodone shipments, all of which were -- again, based on my report, were -- they don't track the way the quotas track and they continue to show that the shipments out of HBC continue to

decline.

Q. What did you take from that? What does that mean to you?

A. It means that the -- those type of patients, although their prescription volume was steady or slightly declined from 2012 forward, you actually saw a further decline in their controlled substances, which tells you a lot about the patient that is coming to Giant Eagle.

This is not the drug-seeking patient. This isn't the patient that comes in and only gets a prescription for hydrocodone. These are the patients that are coming in for diabetes, for their blood pressure, for their stomach issues, and they're not over-indexing or they're not attracting the patient strictly seeking hydrocodone.

Q. You were asked some questions about -- I can't even read my own writing here.

Are you aware of any requirements by the DEA to keep records of due diligence on flagged orders.

MR. BOGLE: Objection.

BY MR. BARNES:

Q. Or suspicious orders?

MR. BOGLE: Exceeds the scope of her

report and my exam.

A. No, there's nothing in the Controlled Substances Act that say that any type of written or investigations -- that any type of written reports need to be kept for any type of time period.

BY MR. BARNES:

Q. I just deciphered my handwriting, and I realized what it said.

You were asked some questions about pharmacists refusing prescriptions. Do you recall those questions?

A. Yes.

Q. Now, when a pharmacist refuses to fill a prescription, is there a record of that in some way in your experience?

A. No, there's not. There's really no way -- if it's a new patient to the pharmacy, there is no record created unless we even fill a prescription. So there's no way to electronically create a record or document that type of interaction because no prescription has been filled.

If it's a prescription of an existing client or an existing patient, those types of notes and documentation doubtfully are put in the record. More

often than not -- it usually depends on what happens with the prescription. If the prescriber says hold it for a couple of days and you can fill it in two days, then that's what we do. If the prescriber says throw it away then we rip it up and we throw it away.

Q. Okay. You were asked some questions about what specific controls; in fact, the questioning was -- you said several times all the controls and you were asked, well, give me an example, and you referred to the controlled substance manual and various controls at the store and warehouse.

Would you look at Pages 43 and 44 of your report? And specifically Paragraph 125.

These bullet points that are highlighted here -- what are they?

A. These are physical -- they're security controls to prevent theft and diversion at Giant Eagle.

Q. And they continue onto the middle of Page 44 -- they include things like limited personnel access to controlled substances, Vocollect software application and hardware, Manhattan software application, order specialist, threshold reports, inventory counting at point of receipt and reserve slots for outbound product counting before the business

day starts, when it ends, during breaks, security cameras, video surveillance, guards.

Are those the types of controls, when you said all controls, that you had in mind?

MR. BOGLE: Object to form.

A. Yes, this is an illustrative list of some of the things that Giant Eagle that is not necessarily required by law, but Giant Eagle chooses to engage in these activities in order to protect their business and to prevent against theft and diversion.

BY MR. BARNES:

Q. You reference a couple of times in your testimony the Durr deposition. Do you remember Walt Durr being deposed and being specifically asked a lot of questions about controls and policies and procedures at the HBC warehouse?

A. Yes.

Q. And do you recall the exhibits to that deposition included numerous policies and procedures? He also testified to oral policies and procedures. Do you recall that testimony?

MR. BOGLE: Object to form.

A. Yes.

BY MR. BARNES:

Q. Is that part of the information you relied upon in your report when talking about written policies and procedures and controls followed by Giant Eagle?

MR. BOGLE: Object to form.

BY MR. BARNES:

Q. And specifically the HBC warehouse?

MR. BOGLE: Object to form.

A. Yes.

BY MR. BARNES:

Q. You were asked a question about a so-called fatal flaw you said is inherent in every threshold system?

A. Yes.

Q. And you specifically were asked if there were -- was it -- fatal flaw in HBC's system and you provided an answer that related to the -- they use an average company-wide aggregate per month?

A. Yes.

Q. Despite that flaw, does that change your -- or even in light of that flaw, does that change your opinion in any way, that Giant Eagle's controls met and exceeded the Controlled Substances Act requirement?

MR. BOGLE: Object to form.

A. Well, what it led me to believe is even though Giant Eagle established that tool and began using that tool, because it didn't identify any suspicious orders, that the current controls, policies, and procedures that Giant Eagle had in place were more than adequate; that they were preventing theft and diversion.

BY MR. BARNES:

Q. Did you identify any fatal flaws in the McCann methodology?

A. Several.

Q. What were the biggest ones?

MR. BOGLE: Object to form.

A. Well, and it depends on which one you're looking at. His first methodology, he was using a six-month average, and although it was store-specific, the six-month average took into account -- failed to take into account any growth of a particular store, so inevitably what you found out is that your largest stores that had any type of growth within the period were always showing up and every order was then showing up on his report. Other times he was using averages.

Again, the biggest thing I had a problem with was the fact that even when he flagged an order he

would then flag every subsequent order, which just basically blew up his entire report to where it was no longer usable.

BY MR. BARNES:

Q. In your experience in the industry and your experience as a pharmacist, does that have any semblance of reality, that if an order is suspicious that every subsequent order is also suspicious?

MR. BOGLE: Object to form.

A. No, because what we've already discussed is a tool like a threshold monitoring -- like a threshold report -- that type of tool cannot determine whether an order is suspicious. It can't.

It is just a report. It's a report that has flaws in it. It can -- red flag. It can create triggers for somebody to go look. But a report cannot determine whether or not an order is suspicious.

BY MR. BARNES:

Q. Did any of the McCann methodologies attempt to tailor any of the methods to a specific organization or defendant?

MR. BOGLE: Object to form.

A. No, he used all five methodologies across a number of different defendants, not taking into

account their specific business models.

BY MR. BARNES:

Q. And you may have testified to this already, but the DEA regulations and guidance that you've seen -- are you supposed to tailor it to each organization?

A. Yes, the DEA has encouraged the design and the development of systems specific to a -- specific to an organization. It's the reason that they were overly ambiguous about the direction that they created, is because they wanted to put the onus back on the organizations to tailor a suspicious order-monitoring program that was unique to their business.

Q. You used the term captive self-distributor in your report and in your testimony today?

A. I did, yes.

Q. Is that -- in terms of Giant Eagle, is that a significant factor for you that they were only distributing to themselves?

MR. BOGLE: Object to form.

A. Yes. So it's important -- and the DEA has come out and said that knowing your customer is vitally important to the prevention of theft and diversion, and the fact that Giant Eagle is a captive self-distributor

means it's a completely tight and controlled distribution loop because they know their customer. Their customer is their own pharmacy.

Giant Eagle is a relatively small organization with 227 pharmacies. Therefore they should design a program that is unique to them and unique to their circumstances and take into account the fact that they are their own self-distributor and they own the merchandise from the time in which the manufacturer delivers it to the time in which they dispense it to the patient.

BY MR. BARNES:

Q. You were asked some questions about HBC's investigations of flagged orders. Do you recall that?

A. Yes.

Q. Do you recall in the deposition testimony the Giant Eagle witnesses being questioned about specific investigations that were conducted?

MR. BOGLE: Object to form.

A. Yes, I remember the testimony that there were orders that were flagged as part of their threshold systems and that these conversations and these investigations took place.

BY MR. BARNES:

Q. You were asked some questions about the Barberton store being close to the Akron hospital and other facilities. This was in connection with Paragraph 165 of your report.

At the end of Paragraph 165, you state that the Barberton pharmacy is across -- is across the street from the Akron Children's Hospital and within one mile of the Summa Health System Barberton campus.

Is that last entity -- is that a hospital?

A. Yes.

Q. And what is the significance of a pharmacy being very close to two hospitals?

MR. BOGLE: Object to form.

A. Well, it goes to the size of the pharmacy. Again, I chose to highlight, I chose to dig in deep on the Barberton store because plaintiffs often pointed out in their discovery that the Barberton store was one that Giant Eagle needed to pay attention to.

So I wanted to do a deep dive into Barberton, and what you come to find out -- Barberton is one of their -- is one of Giant Eagle's busiest stores and part of the reason why it's one of the busiest stores is because it is located very close to large hospital systems.

It will also -- and it would signify to me that not only would their prescription volume be higher, but potentially they would have a higher percentage of controlled substances because patients are fulfilling their discharge meds at these local stores.

And so being around a hospital, you would essentially see a higher percentage of controlled substances in order to take care of these patients right after they have had some sort of surgical procedure.

BY MR. BARNES:

Q. Did the McCann analysis in any of his methodologies attempt to take into account store-specific facts like this, like where the store was located and whether or not it was next to one or two hospitals or pain clinics or things of that nature?

MR. BOGLE: Object to form.

A. No, the McCann report didn't take into account any specifics about any store, which like I said is a flaw with most threshold systems.

BY MR. BARNES:

Q. In your experience as a pharmacist and in the industry, have you seen that effect, that

pharmacies right across the street from hospitals or down the block from another hospital will see these types of prescriptions on a more frequent basis?

MR. BOGLE: Object to form.

A. Absolutely, which is why the DEA comes through and says that you need to know your customer.

MR. BARNES: I've got nothing further.

EXAMINATION

BY MR. BOGLE:

Q. Yeah, so a few follow-up questions.

Exhibit C to your report, your materials considered, I think you said was not exhaustive. Is that right?

A. Correct.

Q. What are you missing? Because we're entitled to know what you're relying on.

A. Well, again, a lot of the materials that I looked at and considered were just Google searches where I would pop into a document, I would read a little bit, and I would pop out. I have materials from -- and remembrance of materials from conferences and different training and continuing education.

Q. And you're relying on those materials to form your opinions?

A. It's part of my experience, so as part of my experience and my expertise, to the extent that I understand those documents and I've been exposed to them, they would help in forming my opinions.

Q. So Exhibit C asks for a list of materials reviewed or considered -- materials. I'm asking do you have any other materials. I'm not asking about your experience; I'm asking about materials. Do you have any other materials that you intend to rely upon or have considered that you have not listed here? I'm allowed to know that.

A. So by materials do you mean pieces of paper? I mean, I've described to you what I consider to be the information that I relied upon in forming my opinions.

Q. So the federal rules require you to list out this information. I'm asking to know what it is. And I'm not asking about your experience. I'm asking about yes, documentary information.

A. I understand, but what -- and my answer to you is that my opinions are based off my knowledge of the industry and my experience and that when I formed these opinion it is based on all of those materials, all of that information that I understand and that I

have been exposed to.

Q. So do you intend to provide additional materials considered after this deposition?

MR. BARNES: I'm going to object. She's not required to produce every document she's ever seen as a professional since pharmacy school.

MR. BOGLE: That's not what I -- that's not the question I'm asking her and you know that.

MR. BARNES: No, and what I --

MR. BOGLE: That's silly. That's not what I'm asking her.

MR. BARNES: Why don't you ask her -- why don't you get to the point?

MR. BOGLE: I already have five times. She didn't answer my question.

MR. BARNES: No, you're asking in a way that's confusing her. Why don't you ask her -- I'm not even going to suggest a question.

MR. BOGLE: Yeah, seriously. I've asked her a very straightforward question.

BY MR. BOGLE:

Q. Are there any additional materials that you have reviewed for this case or have considered that are not included in Exhibit C? It's a very

straightforward question?

A. It's not, because you asked me about materials and there are several things that -- there are several things that I've looked at that's been part of my experience and my years in the industry.

Q. So you're not willing to provide us a complete list of the materials you've considered? Is that what I should take away from this?

A. I don't know how to.

MR. BARNES: You mean for purposes of --

MR. BOGLE: Okay. She doesn't know how to. All right. No, I'm moving on. She doesn't know how to. She's answered the question.

MR. BARNES: No. I'll ask --

A. Okay.

BY MR. BOGLE:

Q. Can diversion occur when controlled substances purchases are less than 20 percent of overall purchases?

MR. BARNES: Objection. Calls for speculation.

A. Yeah, I'm not going to speculate.

BY MR. BOGLE:

Q. You don't know?

A. No, I'm not going to speculate.

Q. I'm not asking you to speculate. I'm asking you do you know if diversion can occur when controlled substances are less than 20 percent of overall purchases? Do you know or do you not know?

MR. BARNES: Same objection.

A. And I will draw a conclusion that says that when you've got 99.9 of prescription for legitimate use and none of those prescriptions -- there's been no evidence that shows that those prescriptions lead to diversion.

MR. BOGLE: Move to strike as nonresponsive.

BY MR. BOGLE:

Q. That's not even close to my question. I'm asking you whether diversion can occur if controlled substances purchases are less than 20 percent of the overall purchases.

MR. BARNES: Object to form. It's vague. Diversion where? In the closed system or outside the closed system?

BY MR. BOGLE:

Q. You can answer my question.

A. Well, and I'm trying to -- I'm not -- I'm

trying to answer your question.

Q. You just answered a bunch of questions from your counsel on this in a very straightforward manner. I'm asking you one follow-up question and you can't answer it. Is that right?

A. No, that's incorrect. I'm not -- I'm trying to answer your question as best as I understand it.

Q. I'll ask it again.

Is it possible for diversion to occur -- I'll even add with opioids -- if controlled substances purchases are less than 20 percent of overall purchases?

MR. BARNES: Object to form.

BY MR. BOGLE:

Q. Is that possible?

A. Diversion can occur at any time, yes.

Q. Now, the Rannazzisi testimony that you were shown here today -- did you review any other parts of his deposition, or did you just review this Exhibit 8?

A. No, I was -- I'm trying to remember. I think the Exhibit 8 -- I may have seen other --

MR. KOBRIN: You can check your documents

if you want.

A. Oh, that's right.

Yeah, it would have been -- so that particular one, it was strictly that exhibit.

BY MR. BOGLE:

Q. So this testimony from Exhibit 8 to his deposition -- your counsel spent a fair amount of time going over this with you. Were you shown any underlying data supporting this 99.5 percent number by your counsel?

A. I didn't ask for any data. The fact that you had the head of the DEA giving this information and testifying in front of Congress leads me to believe -- or you would assume that the information was trustworthy and backed up by data.

MR. BOGLE: Move to strike as nonresponsive.

BY MR. BOGLE:

Q. Were you shown any data by your counsel?

A. No.

Q. Yes or no? And did you read this testimony in your preparation of your report to be a mathematical fact that 99.5 percent of prescribers are not overprescribing? Did you read that and take away

that that's a mathematical fact?

MR. BARNES: Object to form.

A. I read it that it was a relied-upon fact, yes.

BY MR. BOGLE:

Q. A mathematically-confirmed fact?

A. If he said it. He testified to it. So yes, he should have backup to say that that is -- if he's going to give those kinds of numbers, then he should have backup, and he would be in the best position to know.

Q. Not you; right?

A. Not me. That is correct.

Q. And the 99.9 percent number from Mr. Patterson -- same thing. Were you shown any underlying data even when your counsel went through this to support that?

A. No.

Q. And are you relying on that testimony to be a mathematically-proven fact?

A. I'm relying on that testimony to be true based on the people that are revealing the information.

Q. Did you review the remainder of the testimony to get the surrounding context for what was

being discussed here with Mr. Patterson?

A. I did look at some of the beginning and the end, yes.

Q. Did you review all this testimony?

A. I did not.

Q. You said that you previously turned down engagements to be an expert. Do you recall that?

A. Yes.

Q. How many times?

A. Handful.

Q. Do you have any better information than that?

A. Less than maybe five. I mean, I talked to attorneys -- I mean, you're asking. It's a crazy question. They call, they say do you know anything about this we say yes, you get a little more information, you say yeah, I'm not ready to go there yet.

Q. You say it's a crazy question. It's a question you were just asked by your counsel.

A. Right. And my answer -- he asked if I've ever turned any down and I said yes and you want to know how many.

Q. Right.

A. And my question -- my response to you is it's hard for me to quantify because sometimes it's just a question. They will call, they say can you help us do X, Y, and Z, and I evaluate the position that they want to take and I decide yes or no, I want to be involved.

Q. Has a company ever given you their internal data and documents and then you ultimately conclude that you can't help them?

A. No, I've never got even that close.

Q. Right. So you're talking about turning down an engagement sort of with the first phone call and they say can you help us with X, Y, and Z and you say no; right?

A. There have been some that have been after panel interviews and -- where we're getting deeper into the substance of the case.

Q. During those panel interviews, were you ever shown any deposition testimony or internal documents?

A. No.

Q. You talked about DEA inspections. Have you ever participated in a DEA inspection?

A. No.

Q. Ever been present for a DEA inspection?

A. No.

Q. And as to the Barberton pharmacy, you talked about that quite a bit. Did you analyze what percentage of prescriptions came from the two medical facilities you listed there in your report?

A. No, that information is hard to get to.

Q. Did you try to get it?

A. We -- I think we discussed it at one point, but it's too hard to get to.

Q. Did you determine it was too hard to get to?

A. No, it just -- it was based on my knowledge of the industry and how the reporting of these -- of prescription information is we determined that we didn't -- we weren't going to need that information and it wasn't necessarily going to bolster my opinion anyway.

Q. But your opinion is that being close in proximity to these facilities matters; right?

A. That's correct.

Q. It only matters if there's actually a significant number of prescriptions coming from the facilities; right?

A. Yeah, but based on my experience and my work both as a pharmacist and as an executive, I can make the conclusion because that is normal trends that would also occur at this particular location.

Q. But you're assuming that to be true in this case as to Barberton; right?

A. I am making that assumption, yes.

MR. BOGLE: Okay. I don't have anything further.

EXAMINATION

BY MR. BARNES:

Q. Just one follow-up. This Exhibit C.

Have you listed in this Exhibit C all of the documents that are specific to this engagement that you are relying upon to form your opinions?

THE WITNESS: Yes.

MR. BARNES: Nothing further.

THE VIDEOGRAPHER: Okay. We are going off the record at 4:29 PM.

[SIGNATURE RESERVED.]

C E R T I F I C A T E

I, JOHN ARNDT, a Certified Shorthand Reporter and Certified Court Reporter, do hereby certify that prior to the commencement of the examination, SANDRA KINSEY was sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

_____

JOHN ARNDT, CSR, CCR, RDR, CRR

CSR No. 084-004605

CCR No. 1186

I, SANDRA KINSEY, the witness herein, having read the foregoing testimony of the pages of this deposition, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

_____

SANDRA KINSEY

Sworn and subscribed to before me,
This _____ day of _____, 201_.

_____

Notary Public

DEPOSITION ERRATA SHEET

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

SIGNATURE:_____DATE:_____

SANDRA KINSEY